





Ontario

Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario

Submissions

v.8

ROYAL COMMISSION ON ASBESTOS

INDEX OF WRITTEN SUBMISSIONS

BINDER VOLUME NUMBER: 8

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CANADIAN UNION OF OPERATING ENGINEERS AND GENERAL WORKERS LOCAL 110

SUBMISSION TO:

ROYAL COMMISSION ON MATTERS OF
HEALTH AND SAFETY ARISING FROM
THE USE OF ASBESTOS IN ONTARIO

"DEALINGS WITH THE WORKMEN'S COMPENSATION BOARD" Digitized by the Internet Archive in 2023 with funding from University of Toronto

INTRODUCTION

The Canadian Union of Operating Engineers and General Workers Local 110 represents 140 workers at the Richard L. Hearn generating station in Toronto. Owned and operated by Ontario Hydro the R.L. Hearn G.S. has a capacity of 1200 megawatts of electricity produced by 8 coal and gas fired boilers driving 8 turbo-generator sets. Currently only units 6,7 and 8 are in operation producing a total of 600 MW. The remaining units are moth-balled.

The purpose of this presentation to the Royal Commission is to bring to the attention of the people of Ontario the frustration and despair some of our brothers have faced and others can expect after contracting a work related disease.

There are presently five persons working at R.L. Hearn G.S. known to be suffering respiratory problems most probably caused by exposure to asbestos. Four of these are union brothers, the fifth is a member of management. This brief will deal mainly with two of these persons; - brothers

John Wilks and Doug Wray. Both men are members of the mechanical maintenance department at R.L. Hearn G.S. Mr. Wilks has approximately 20 years service in this department starting as a craftsman's helper and continuing as a mechanic-fitter.

Mr. Wray has approximately 17 years service, also starting as a craftsman's helper and then continuing to become a welder.

THE WORK ENVIRONMENT

The R.L. Hearn Generating Station is one of the oldest thermal generating plants operated by Ontario Hydro. From the outside it looks good, almost impressive. A very large red brick structure with an enormous smoke stack makes it one of Toronto's landmarks. As any proud landlord, Ontario Hydro has gone to great expense at maintaining this 30 year old building in good repair for those looking at it from the outside, perhaps on a Sunday drive down by the lake. Only very recently much time and money was spent repointing and repairing the brickwork and coping stones and repainting the steelwork in the coal yard.

From the inside however, the scenery changes drastically. Typical perhaps of any industrial setting of that age and construction, the interior is dark and dingy. Large pieces of machinery and equipment roar and hiss actually frightening some newcomers. Huge ducts and massive steamlines weave their way everywhere throughout the plant. Eight huge boilers seven stories high and each about the size of a small apartment building. Some lay idle while others roar consuming unimaginable amounts of coal.

In sharp contrast to the well groomed appearance on the outside, the interior of the plant is in a shameful state of ill repair. Housekeeping is at a bare minimum since almost all of the cleaning staff was either laid off or displaced when the capacity of the station was reduced almost 2 years ago. The asbestos insulation which covers almost every duct, pipe and



piece of machinery is crumbling everywhere, being the weakest component of all of this equipment. Some of it has been repaired and recoverd, but ironically, only those places where lagging is absolutely essential for efficient operation of equipment has this maintenance been done. In addition to heavy concentrations of asbestos present in the failing lagging, the worker is often exposed to other dusts such as pulverized coal dust and fly ash which are caused by worn out piping or routine maintenance procedures such as the repair of boiler tube leaks.

THE INJURED WORKERS - JOHN WILKS

John Wilks, as mentioned earlier, has a 20 year history of occupational exposure to asbestos at the R.L. Hearn G.S.

Approximately 2 years ago Mr. Wilks was informed by the medical services department of Ontario Hydro that certain abnormalities in annual chest X-rays taken by the Occupational Chest Diseases branch of the Ministry of Labour had appeared as long as 4 years prior to this information being disclosed to him. No satisfactory explanation was provided by Medical Services as to why it took 4 years to inform Mr. Wilks of his abnormal radiograph. Medical Services said they were unaware of the abnormality and said that Occupational Chest Diseases Branch never informed them of any abnormality up until shortly before they informed Mr. Wilks.

A claim, however, was promptly initiated to the Workmen's Compensation Board on behalf of Mr. Wilks by the



Medical Services Department of Ontario Hydro. This claim was reviewed and disallowed by the Workmen's Compensation Board August 1980. Mr. Wilks is still working as a fitter mechanic at R.L. Hearn G.S.

Ironically, the latest victim of an abnormality discovered during annual screening X-rays was informed by Medical Services that they were following the progress of an abnormality over a period of 4 years prior to informing the man of his condition.

Without pointing an accusing finger one cannot help but recollect the Ontario Federation of Labour brief to this Royal Commission (pg. 107), the correspondence in 1949 of Dr. Kenneth Smith, the Canadian Johns Manville medical director, reporting on the Asbestos, Quebec operation.

"It must be remembered that although these men have the X-ray evidence of asbestosis, they are working today and definitely are not disabled from asbestosis. They have not been told of this diagnosis, for it is felt that as long as the man feels well, is happy at home and at work, and his physical condition remains good, nothing should be said. When he becomes disabled and sick, then the diagnosis should be made and the claim submitted by the



Company. The fibrosis of this disease is irreversible and permanent so that eventually compensation will be paid to each of these men. But as long as the man is not disabled, it is felt that he should not be told of his condition so that he can live and work in peace and the Company can benefit by his many years of experience. Should the man be told of his condition today there is a very definite possibility that he would become mentally and physically ill, simply through the knowledge that he has asbestosis."

THE INJURED WORKERS - DOUG WRAY

The frustration and human tragedy of becoming injured or contracting an occupational illness and then having to deal with Workmen's Compensation Board is best illustrated by this letter written by Doug Wray eleven months after the onset of his ordeal.



94 Reytan Blvd. Bay Ridges, Ont. Pickering

February 3rd, 1981

Mr. Lincoln Alexander, Chairman, Workmen's Compensation Board, 2 Bloor Street East, Toronto, Ontario, M4W 3C5

Dear Mr. Alexander:

Re: Claim No. S12564241

I am writing to you personally to ease my frustrations involving the establishment of the above mentioned claim.

On March 5th, 1980 at the Ajax-Pickering General Hospital I had a Bronchoscopy to determine the cause of collapse of left lung and possible tumor which concerned my doctor when X-rays taken in early January showed a shadow that did not disappear when antibiotics were administered (a hacking cough of two month's duration had finally driven me to see my doctor at that time). Shortness of breath was another symptom being experienced.

After the Bronchoscopy, my doctor, Dr. R. HoYuen and the Surgeon, Dr. E.T. Salmon advised me that in their opinion an operation should be performed for a possible removal of the lower lobe of my left lung. This surgery was performed on March 10th at the same hospital.



While recuperating at the hospital the doctors informed me that they had found asbestos had impregnated the plural lining of my left lung and with the removal of the plural lining the lung had become inflated again. No malignancy was found in the biopsy of the lung lining or lung tissue.

My employer, Ontario Hydro, was informed of the findings on the sick report which was received by me after the surgery. Dr. Salmon filled in the report in my room at the hospital indicating the finding of asbestos and the removal of the lung's lining. He also noted that the Compensation Board should be informed by check mark on the form.

On June 10th, 1980, Dr. M.C. Wills, Ontario Hydro Staff Physician came to see me at my home. He informed me that a claim was being filed on my behalf.

A letter dated July 9th, 1980 was received from the Workmen's Compensation Board with Employee's Report information forms to be filled in amdreturned. This was done.

A letter dated August 19, 1980 was also received requesting additional information regarding exposure to irritants. To this letter I replied by a telephone call to the Adjudication Branch telling them of the exposure to asbestos and asking if a letter was required and was told it was not necessary.



On September 10, 1980 I again phoned the Compensation Board giving the claim number and was informed that they were awaiting additional information from my employer, Ontario Hydro. I had seen Ontario Hydro Staff Physician, Dr. M. Wills on September 9, 1980 for a medical assessment to return to work on a half-day basis. At that time I was told that all information had been obtained.

On September 25, 1980 I again telephoned the Compensation Board and was advised to call back in a few days, which I did on October 6th. I was advised that an appointment was made for me to be seen by the Board's Advisory Committee on Occupational Chest Diseases, 50 Grosvenor Street, Toronto, on October 9, 1980 at 1.00 p.m. and that a letter confirming this was on the way. This letter did not arrive until October 15th and was dated October 6th, 1980. The letter said "PLEASE PRESENT THIS LETTER WHEN REPORTING". Needless to say, when I reported to 50 Grosvenor St. on October 9th at 1.00 p.m. there was some confusion in locating previous X-rays and medical reports. After having a chest X-ray and part way through the medical and pulmonary tests, the report was finally located.

I was informed it would be several weeks before the report would reach the Compensation Board. During my next contact on November 3rd, I was told it might take as long as six weeks before a report would be received.



On November 19th another phone call was made and was told that I do not have Asbestosis and therefore I should be happy, and that I would have something in writing within a couple of days.

On November 27th I phoned again and was told it was up to the Medical Division and that it would likely be a few more days. On December 4th I was told once again that it was up to the Medical Division.

On December 5th, 1980 Compensation Board Claims
Adjudicator called telling me that the Compensation Board's
Dr. Stewart had asked for an opinion from a Dr. A. Ritchie and that I would be receiving a letter from Dr. Stewart.

On December 12th I attended the public meeting of the Royal Commission on Asbestos. After the meeting, I had your Dr. Stewart pointed out to me and decided to take the opportunity to introduce myself and ask him if he recalled the case and if a letter would be forthcoming. He was in a hurry so it was a brief encounter. But he did say that when they operated on me they were looking for cancer and that they were waiting for Dr. Ritchie's report before a decision would be made.

On January 5, 1981 I called the Board again and was told I would not receive a letter from Dr. Stewart seeing that I had spoken with him in a chance meeting and to call in two weeks' time.



On January 20th I again called - there was still no report. However, at 5:45 the same afternoon (Jan. 20th) I had a call from an Adjudicator saying the report was in and should be typed in the course of a couple of days.

On January 26th was in touch again and told they had not seen the report but it should be along in a couple more days.

On February 2nd another phone call. This time I was told I had misunderstood; they had not received the report from Dr. Ritchie yet.

Now, on February 3rd with the assistance of the Hydro nurse I obtained a phone number and located Dr. Ritchie and spoke with him. He informed me that as far as he could recall the report had been sent some time ago to the Compensation Board.

As you can well understand, this further leads to more frustration and confusion regarding my claim status after 11 months.

Fortunately, I work for Ontario Hydro and had accumulated a goodly number of sick days which helped to ease the strain of reduced wages. I am now working 3/4 days.

I realize that in all large organizations it takes time to sort things out and into the proper channels, etc., however, I think you will agree one tends to lose patience and



heart when things seemingly are at a standstill after such a lengthy time for an occupationally related lung disease.

I trust that perhaps you have been enlightened by the problems I have experienced in this system and I thank you for any assistance you may be able to render on my behalf in this matter.

Yours sincerely,

Douglas Wray Tel. No. 839-1076

DW/nw Registered Mail

Mr. Wray's claim was disallowed shortly after the writing of the preceding letter. It took a full year to receive this rejection. However, noting the date of the letter written by the Station Personnel Officer (front page Appendix II), it would appear that the claim for compensation benefits was only initiated by the employer at the end of September 1980 and therefore, processing of the claim by the Workmen's Compensation Board only took 5 months.

Following rejection of this claim, the union began preparing for the appeal, first seeking legal counsel and then enlisting the aid of the Injured Workers of Ontario. Further



medical evaluation was sought and obtained through the Injured Workers of Ontario. The results of this evaluation were very much in the favour of Mr. Wray (Appendix III Muir). Ontario Hydro Medical Services Department also offered its support as it had supposedly done before the initial claim rejection. At the request of Ontario Hydro, Mr. Wray agreed to undergo further medical evaluation by a company chosen medical specialist. The reply received from this specialist was also in support of Mr. Wray's case (Appendix IV:- Wills).

On the day of the appeal hearing Mr. Wray had left work along with his union representative only to discover when they arrived at the place of the hearing that the claim had been reviewed and recognized. It appears that the Workmen's Compensation Board had tried to the very last minute to call the bluff, but reversed itself when it was clear that Mr. Wray would not back off.

At the time of this writting, eventhough Mr. Wray's claim has been recognized, he has received no compensation benefits to date. Mr. Wray continues to work at R.L. Hearn G.S. as a welder, in a somewhat restricted capacity, eventhough he has put in for a transfer to a healthier work environment over 6 months ago.



THE COMPANY DOCTORS

As does the R.L. Hearn G.S., so Ontario Hydro looks good from the outside. The company medical staff have seemed more than helpful in initiating claims and standing up for the injured worker. It would almost appear as if they were advocating instant claim service from the Workmen's Compensation Board. Nevertheless, certain questions do arise on our part. Certain questions such as; why in the case of D. Wrav did it take 3 months for the company doctor to become involved in such a serious case? Why, as in the case of J. Wilks, did it take several years to inform an employee of an abnormal radiograph? How helpful can a company doctor be when he addresses a group of employees about health and asbestos disease and states that pleural plaques can very likely be caused by pigeon droppings? Or, how about the plant nurse who tells a concerned employee that there is very little blue asbestos present in the plant and that the other stuff isn't a problem? The same nurse reassures an employee complaining of chest pains after spending a week working in the boiler that he sould go see his doctor but, that the pain could be imaginary and due to the great deal of publicity in the media about asbestos. Why is the same doctor bending over backwards to get a claim accepted for one injured worker as it would appear in the case of D. Wray and, on the other hand only very recently is doing everything in his power to bring back workers



with hand injuries to so called "light duties" before they are fit to return, just so to avoid lost-time claims assessment?

THE COMPANY

Ontario Hydro, one of the largest employers in
Ontario sets an example for all other industries in the province.
The workers of this corporation are envied by many other
workers in industry for their supposedly above average salaries
and benefits and their allegedly excellent working conditions.
We, the workers at the R.L. Hearn G.S. however, find the working
conditions, especially in matters of health and safety, to be
somewhat less than excellent.

On June 4th 1980 a Ministry of Labour Health and Safety inspector made a routine inspection of the R.L. Hearn. His report was posted on one of the notice boards at the plant. Concluding his report the inspector stated that he was given by management an Ontario Hydro directive, a copy of which he was attaching to his report. The directive dealt with the handling, removal and housekeeping needed due to asbestos in the workplace.

This directive was never posted. Questions arose as to its whereabouts and these questions were officially channelled to management by the union representative at a Joint Health and Safety Committee meeting September 11, 1980.



Management answered that there was no standard procedure dealing with asbestos, but that each station was responsible for its own procedure. A procedure was being developed and would be posted shortly.

This procedure (Appendix V) was posted later the same month (September 1980). At the Following Joint Health and Safety Committee meeting, after considerable pressure from the union, management brought forward the Ontario Hydro directive (Appendix VI) referred to by the Ministry of Labour inspector in his report. Management's position now, was that a directive outlining standard procedures for dealing with asbestos had existed and was in force since 1972. In fact, in his report of June 1980, as found in Appendix II, (W.C.B. - Summary of Information #6) the Company Physician makes an indirect reference to this directive stating that, "Asbestos work procedures began to change in the early 1970's at Ontario Hydro to minimize exposure."

Obviously, there were standard procedures dealing with the handling of asbestos (Appendix VI) and the company was informing agencies such as the Workmen's Compensation Board and the Ministry of Labour that these procedures were currently being used. Unfortunately though, the workers that were doing the actual handling of the asbestos and were receiving their daily doses of exposure (Appendix II - D. Wray W.C.B. Summary of information - #12 - report of Chief Pathologist - 16,500



fibres in 5 gram tissue sample) were unaware of any such procedures.

After the initial reference to a standard procedure in the Ministry of Labour inspector's report June 4, 1980 and prior to the release of the directive in late October 1980, dozens upon dozens of "Comfo II" type respirator masks with the appropriate filtre cartridges appeared as stock items in the stores department at the plant. These respirators were approved and considered safe in atmospheres of high asbestos dust concentration.

After the release of the directive (Appendix VI) management changed their position and now maintained that a procedure dealing with the handling of asbestos did exist and that appropriate protection was available to the employees since the mid 1970's. The union could not accept this management position and conducted a survey of all persons in the mechanical maintenance department (Appendix VII). The results of this survey conclusively show that the workers were not informed of any procedures on the handling of asbestos and that proper respiratory protection was not provided.

Eventhough a procedure does now exist and has existed since September 1980, dealing with the handling of asbestos at R.L. Hearn G.S. (Appendix V), it is very poorly enforced.

On large projects where outside contractors are employed to



perform work such as steam-pipe lagging or boiler retubing, the shop stewards constantly have to remind management that rules are being disobeyed or ignored and procedures are not being enforced.

One of the safety principles introduced by management into this year's safety campaign at Ontario Hydro deals with eliminating the hazards. Another principle of slightly lesser importance talks about controlling the hazard if it is impractical to eliminate it altogether.

It seemed for a moment that Ontario Hydro was practicing what it preaches as Dewar's Insulation Contractors moved into the R.L. Hearn and began an extensive job of repairing and recovering much of the broken insulation at the station. Even though they were not removing the asbestos in most places, but just recovering it, there seemed to be some attempt by the company at controlling the hazard.

Suddenly, however, all the work far from being finished, stopped. Questions arose from concerned workers as to why the Dewar's people were no longer working on the jobs they had started. An answer was received at one of the monthly safety meetings when the maintenance superintendant made a slip of the tongue and mentioned that the annual insulation budget was not only exhausted, but had been considerably exceeded. Contrary to popular belief, safety did



have a price at Ontario Hydro and the price apparently was too high. Was the concern for the health and safety of the worker by Ontario Hydro limited to a budget of a mere 60,000 dollars?

Another question which arises from what has happened at R.L. Hearn is of much greater concern. Will Ontario Hydro operate and run into the ground, as it has the R.L. Hearn G.S., the now modern nuclear facilities it has placed so much emphasis on? Will public health and safety also have a price in say, 30 years when the nuclear facilities are becoming old and unreliable?

And, one final question in dealing with the company and it's concern for the health and welfare of it's employees. Why, with the ever increasing need for skilled tradesmen (i.e. welders) in Ontario Hydro is Doug Wray still working at the R.L. Hearn even after he himself has requested to be transferred to a healthier working environment over 6 months ago?

THE UNION

In the absence of regulations designating asbestos as a hazardous substance, the union has encountered only frustration in dealing with management. In fact, management could well argue that they have done more than is required of them to minimize the



worker's exposure to asbestos.

The union has assisted workers affected by asbestos disease in presenting and appealing their cases before the Workmen's Compensation Board.

The union stewards have constantly reminded management of their procedures in dealing with asbestos (Appendix V) and have asked that management enforce these procedures. Very little progress has been achieved in this matter. It should be, as in the matter of hard hats and safety glasses, that management enforces the safety policies it has set.

Union complaints to the Joint Health and Safety
Committee have been frustrated. Union members on this
committee have had much input with regards to health and
safety at the plant, however, when financial expenditures are
involved, management holds the purse strings. Financial
expenditures are definitely involved when it comes to dealing
with asbestos.

Although the union has spoken out loudly on behalf of the workers involved in this matter, many of the individual members have remained silent fearing the plant will be closed before anything else will be accomplished. Silence is the price they are paying for safety. Job safety, that is.



THE WORKMEN'S COMPENSATION BOARD

In light of the Weiler Report and The White Paper on the Worker's Compensation Act many changes seem to be coming our way. Are these changes adequate however, when one considers that the fundamental freedom allowing the worker access to the courts to seek impartial justice remains removed?

Under the first and second proposals in The White
Paper, the benefits received by the injured worker are increased
in some cases, but still do not cover the worker from complete
loss of earnings. Weiler's arguement is that there must be
some incentive for the worker to return to work. Even though
a mandatory experience rating of employers is proposed in the
seventeenth proposal of the White Paper, there is no
recommendation to directly penalize an employer for an unsafe
workplace. Experience rating is based on yearly assessment.
By including increased assessment costs with other increases we
have all come to expect, the employer can absorb this increased
assessment easier and cheaper than it would be to clean up
hazardous working conditions. There is little incentive for the
employer to make the work place safe.

In the seventh proposal of the White Paper the surviving spouse of a victim of a fatal accident or industrial disease, if she is under 40, is left out in the cold. We view this as a regressive proposal.



According to the eighteenth proposal of the White Paper, "a worker should accept available work deemed suitable by the Board, or lose equivalent compensation". This proposal is totally unacceptable to us. We have seen how the employer provides "suitable" work in the form of "light duties" in an attempt to reduce the length of a lost time claim. The benefit of such "light duty" for the employee is quite often very questionable. The only "suitable" job should be the old job and if the injured employee is no longer able to do that job, the employer should provide retraining to a better paying job or provide equal pay for a lesser job.

We view other proposals with optimizm yet, with caution. An independant appeals tribunal, an independant medical review panel, an independant worker's advisor and access to claim records all seem to be proposals which could assist the injured worker and do provide more avenues to claim acceptance than does the present system. However, it remains to be seen how these proposals will be enacted and how independantly and uncompromisingly these agencies will function.

THE ROYAL COMMISSION

We welcome the opportunity created by the Royal Commission to air our frustrations. We admit however, that up until now, aside from a certain satisfaction of being heard, the



only real accomplishment of the Royal Commission is the stalling of the enactment of the proposed regulation designating asbestos. All is not lost, as we look back in the light of other briefs presented to the Royal Commission and we see that the proposed regulations are far from adequate. Referring to the Ontario Federation of Labour submission to this commission we fully concur and support their recommendations on pages 124-126 and their constructive criticizm of the proposed regulations in Appendix III.

As for the men already suffering from effects of asbestos and fighting the Workmen's Compensation Board for their claims, a comment, sad but true, comes to mind.

One of the comments on the survey questionaire (Appendix VII) actual comments on file at C.U.O.E. Local 110)

"...too little, too late..."



APPENDIX I

JOHN WILKS



Ploor Street East Toronto, Ontario M4W 3C3 Telephone (416) 9658915

The Workmen's Compensation Board



Mr. D. Bishop 192 Crocus Drive Scarborough, Ontario MIR 4T7

October 15, 1980

Dear Mr. Bishop

Claim S12564239 - J. Wilks

The information you have requested is enclosed.

Following your review of this information and should you wish to proceed with an appeal, you should ensure that you have the information in your case fully prepared before requesting an appeal Hearing date. This is important as postponements of scheduled appeal Hearing dates are not usually allowed.

A Hearing date will not be set until we receive confirmation that you are ready to proceed with the appeal. Please write to the Registrar of Appeals, Workmen's Compensation Board, 2 Bloor Street East, Toronto, Ontario, M4W 3C3. A Hearing date will then be arranged.

Yours very truly

Mrs. M. LeBannister

encl.

Supervisor

Appeals Services



September 30, 1980
R.L. Hearn TGS
NT22 08901

Re: John Wilks Mechanic Fitter

I have been advised by Dr. M. Wills of Ontario Hydro's Health and Safety Division that, in his opinion, Ontario Hydro employee, Mr. John Wilks, may have an occupational illness that may be asbestos related.

A Workman's Compensation Board Claim has been initiated by Ontario Hydro's Health Services Department on Mr. Wilk's behalf and the board alone will decide on the validity of the claim.

This letter is written to comply with Chapter 83, Section 25 (2) of the Occupation Health and Safety Act, 1978.

Peter Buehl Station Personnel Officer R.L. Hearn TGS

PB: an

Mr. J. Wilks Dr. M. Wills

Mr. R.B. Kennedy Mr. J. Culley

CUOE Union President

Industrial Health and Safety Branch

Health and Safety Committee



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		HEALTH AND SAFETY

July 18/80 Personnel Officer

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2 Bloor Street East Toronto, Ontario M4W 3C3 Telephone (416) 965-8853

The Workmen's Compensation Board

. August 25, 1980

Mr. John A. Wilks, 3420 Eglinton Avenue East, Apt. 901, SCARBORO, Ontario

Dear Mr. Wilks,

Claim S12564239

A claim was established on your behalf to determine if your asbestosis condition was related to your employment at Ontario Hydro. Additional information was secured from your employer, yourself and medical information obtained. Your claim has now been referred to the Review Branch for consideration.

To be entitled to compensation benefits it must be established that the diagnosed disability can be related to an accident or your work environment.

Information does indicate that you have been employed with Ontario Hydro since January 16, 1951. In the initial stages of your employment you were working as a security guard and during the interval May 2, 1962 to October 29, 1970, you worked as a craftsman helper. After October 29, 1970, you have been working as a fitter. While employed as a craftsman helper and a fitter you have been working out the Hearn Generating Station. We are aware of the environment in which you have worked while at the Hearn Generating Station.

The matter of relationship between the asbestosis condition and any other chest disease has been reviewed by one of our Industrial Medicine Consultants. The opinion has been expressed that there is no relationship between your asbestosis or any other chest disabilities and your employment exposure.

continued .../2



Claim S12564239

(2)

The Review Branch has carefully considered the information in your claim. In view of the medical opinion expressed the Review Branch concludes that your chest disability has not been shown to be related to your employment exposure. Therefore your claim for benefits must be denied.

The above decision is open to appeal and information on the appeals procedure may be found in the attached pamphlet.

A copy of this decision has been sent to your employer, Ontario Hydro.

Yours very truly,

G.McHoull
Claims Review Branch
Encl: IAA
rb



SUMMARY OF INFORMATION

Claim S12564239 - John A. Wilks

Issue:

Mr. Wilks is claiming entitlement to asbestosis. He has claimed that this condition arose out of and in the course of his employment with Ontario Hydro.

Diagnosis:

Non-Entitlement:

- 1. Obstructive lung disease.
- 2. Asbestosis
 (questionable).
- 3. Coronary heart disease.

History:

In June, 1980, Mr. Wilks submitted a claim for asbestosis. He attributed the development of this condition to his employment with Ontario Hydro since January, 1951. To clarify if entitlement was warranted, information regarding Mr. Wilks' employment with Ontario Hydro was obtained. It was found that between 1951 and 1962 Mr. Wilks was employed as a security guard. From 1962 to 1970 he was employed as a craftsman's helper and at the Hearn Generating Station and from 1970 to the present was employed as a fitter at the Hearn Generating Station.

In addition a detailed medical report was submitted by the company doctor outlining Mr. Wilks' previous occupational history, his diagnosis, and results of x-rays and pulmonary function tests. The conditions diagnosed were coronary artery disease which was controlled medically, obstructive lung disease and plural plaques with minimal parenchymal and a history of asbestos exposure.

The medical information was reviewed by the Board's Consultant in Chest Disease. He noted that the x-rays showed fibrotic parenchymal and plural changes beginning in 1971 which were surgestive of exposure to asbestos. The doctor felt there was non-sufficient evidence to warrant listing the claim for examination at the time and recommended the claim for asbestosis be denied. This decision was confirmed by the Claims Review Branch on August 25, 1980.



Mr. Wilks has now appealed this decision.

Documents:

1. Radiologist's Report, June, 1980.

The x-rays revealed evolutionary changes in fibrotic parenchymal and pleural residuals beginning in 1971. Pleural plaque formation was seen at the left lateral chest wall slightly advanced since 1974. A history of asbestos exposure was noted but this fact did not necessarily imply a causal relationship to the radiographic findings.

Pulmonary function tests were within normal limits.

2. Company Doctor's Letter, June, 1980.

The letter stated that the company doctor was submitting a claim for asbestosis on behalf of Mr. John Wilks. The doctor stated that the chest x-ray findings were suggestive of asbestosis exposure and in addition he had mild two moderate obstructive lung disease.

3. Company Doctor's Report, June, 1980.

The doctor stated that Mr. Wilkds was on the Chest Disease Surveillance Program because of presumed previous asbestos exposure. The doctor noted that recent chest x-rays showed a shadow on the lung however tomograms were normal. The doctor pointed out that in 1978 the Industrial Chest Disease Services had reported that there was evolutionary changes in fibrotic parenchymal and pleural residuals beginning in 1970 and that there were pleural plaque formations on the left lateral chest wall slightly advanced since 1974. The family doctor had been contacted who had taken numerous chest x-rays. The family doctor felt there had been minimal change over the past ten years.

Mr. Wilks reports no specific respiratory system complaints. He smoked approximately half a pack of cigarettes a day having done so since his teen years. He had athrosclerotic heart disease which was diagnosed in 1976 and controlled by medication.

The occupational history was reviewed and it was noted that at age 14 he began working in a bake shop. He joined the army at age 19 in the capacity of a cook. At age 23 he returned to the bake shop. At age 26 he was employed as a driver and at age



27 began working for Ontario Hydro in security. At age 38 he joined the Hearn Generating Station as a craftsman. He felt he had been exposed to asbestos off and on when he had helped strip asbestos off pipings, boilers, and helping the lagger.

The doctor diagnosed coronary artery disease that was controlled medically. He also diagnosed obstructive lung disease which was mild to moderate and pleural plaques with minimal parenchymal involvement and history of asbestos exposure.

The doctor outlined that he discussed the results of his testing with Mr. Wilks and advised him that in his opinion the obstructive lung disease was probably due to digarette smoking and that the pleural plaques and minimal parenchymal involvement produced no significant changes in pulmonary function. He advised him he would present his case to the Compensation Board for consideration.

4. Injured Employee's Report of Occupational Disease, July, 1980.

> The report, stated that Mr. Wilks was 56, employed as a mechanic fitter for Ontario Hydro was submitting a claim for occupational disease. He outlined that he had worked with Ontario Hydro from January 16, 1951 to date.

Employer's Report of Occupational Disease, 5. July, 1950.

> The report confirmed Mr. Wilks' periods of employment. The report showed that from January 16, 1951 to May 2, 1962 he was employed as a security guard in the Central Region. From May 2, 1962 to October 29, 1970 he was employed as a craftsman! helper at the Hearn Generating Station. From October 29, 1970 to the present time he was employed with Ontario Hydro as a fitter at the Hearn Generating Station.



Chest Disease Specialist's Opinion, August, 1980.

The doctor reviewed the medical information submitt along with the x-rays. He noted the x-rays showed fibrotic parenchymal and pleural changes beginning in 1970 suggestive of exposure to asbestosis. Pulmonary function tests were within normal limits. The doctor noted he had coronary heart disease and obstructive lung disease. He felt there was insufficient evidence to warrant listing Mr. Wilks for examination at the present time and recommended that the claim be denied for asbestosis.

Claims Review Branch Decision, August, 1980.

The Review Branch noted that the matter of a relationship between the asbestosis condition and any other chest disease had been reviewed by one of the Board's Industrial Medicine Consultants. opinion had been expressed that there was no relationship between Mr. Wilks' asbestosis or any other chest disability and his employment exposure.

'In view of the medical opinion expressed, the Review Branch concluded that Mr. Wilk's chest condition had not been shown to be related to his employment exposure. Therefore the claim for benefits must be denied.

Mrs. F. Medland

Appeals Administrator "B"

October 14th, 1980

FM:cm



APPENDIX II

DOUG WRAY



September 30, 1926 R.L. Hearn TGS NT22 08901

Re: Douglas Wray
Shift Maintainer I - R.L. Hearn TGS

I have been advised by Dr. M. Wills of Ontario Hydro's Health and Safety Division that, in his opinion, Ontario Hydro employee, Mr. Donglas Wray, has an occupational illness that is asbestos related.

A Workman's Compensation Board Claim has been initiated by Ontario Hydro's Health Services Department on Mr. Wray's behalf and the board alone will decide on the validity of the claim.

This letter is written to comply with Chapter 83, Section 25 (2) of the Occupation Health and Safety Act, 1978.

Peter Buehl

Station Personnel Officer

R.L. Hearn TGS

PB: an

cc: Mr. D. Wray

Dr. M. Wills Mr. R.B. Kennedy

Fr. J. Culley

CUOE Union President

Industrial Health and Safety Branch

Health and Safety Committee



2 Bloor Street East Toronto, Ontario M4W 3C3 Telephone (416) 965-8851

Workmen's Compensation Board



February 17, 1981.

Mr. Dòuglas Wray, 942 Reytan Blvd., Bay Ridges, Ontario. LlW 1Y7

Dear Mr. Wray:

Claim S12564241

As you are aware, the Adjudication Branch has been making enquiry with respect to your chest disability and its relationship to your employment. This matter has now been referred to the Review Branch for consideration.

I would like to take this opportunity to apologize for the delay in rendering a decision in this matter; however, considerable investigation was necessary from a medical standpoint in order to clarify an exact diagnosis and its relationship to your employment. This necessitated a review by the Advisory Committee as well as an independent study by Dr. A. C. Ritchie, Chief Pathologist University of Toronto. I hope that this delay has not been too much of an inconvenience to you.

In order to establish entitlement to payment of medical aid and compensation benefits, it must be shown that your disability was the result of an accident in the employment or arose out of and occurred in the course of the employment within the provisions of the Act.

We received information from your employer indicating that you were recovering from a thoracotomy and pleurectomy as treatment for extensive pleural thickening. There was a history of occupational exposure to asbestos and it was felt that these particular surgical interventions were necessary because of your exposure to asbestos.

It is our understanding that you were off work from March 3rd, 1980, and are claiming compensation benefits from that particular date.

Cont....



2

February 17, 1981.

Claim S12564241 - Douglas Wray - Cont.....

Initially, your disability was diagnosed as acute bronchopneumonia. This did not appear to resolve and consequently, a
collapse of the left lung developed particularly the left lower
lobe. Due to a suspected carcinoma, further tests were carried
out by way of a thoracotomy and pleurectomy. The results of that
particular biopsy report showed no evidence whatsoever of any
malignancy.

A review by the Advisory Committee in October of 1980 showed an absence of any asbestosis. Dr. A. C. Ritchie was then asked to review the tissue and has also concluded that although exposed to asbestos, there was no evidence in the biopsy that this exposure had damaged your lungs. Fibrosis of the sort seen in asbestosis was not present.

Our Chief Consultant in Industrial Diseases has also had the opportunity of reviewing all of the documentation on record and has expressed the opinion that unfortunately you are not suffering from any compensable disorder which could be related to your exposure to asbestos while employed with Ontario Hydro. The surgical procedures carried out would appear to have been for diagnostic clarification but not for any specific asbestosis.

The Review Branch has carefully considered all of the information available at this time and while we accept that you have been exposed to asbestos fibres while employed with Ontario Hydro, there is no evidence to support that you are in fact suffering from any work related disability and in particular, asbestosis and under the circumstances, regretfully we are unable to accept entitlement for payment of medical aid or compensation benefits as we have been unable to establish that your disability arose out of your employment.

The above decision is open to appeal and information on the appeals procedure may be found in the attached pamphlet.

A copy of this letter is being forwarded to your employer.

Yours very truly

in & Bays

M. F. Bompas Claims Review Branch Encl. I.A.A.

rl



2 Bloor Street East Toronto, Ontario M4W 3C3 Telephone (416) 965-8915

The Workmen's Compensation Board



March 13, 1981

Mr. Douglas Wray 942 Reytan Blvd BAYRIDGES, Ontario LlW 1Y7

Dear Mr. Wray:

Tlaim S12564241

The information you have requested is enclosed.

Following your review of this information and should you wish to proceed with an appeal, you should ensure that you have the information in your case fully prepared before requesting an appeal Hearing date. This is important as postponements of scheduled appeal Hearing dates are not usually allowed.

A Hearing date will not be set until we receive confirmation that you are ready to proceed with the appeal. Please write to the Registrar of Appeals, Workmen's Compensation Board, 2 Bloor Street East, Toronto, Ontario, M4W 3C3. A Hearing date will then be arranged.

Yours very truly

Supervisor

Appeals Services

Mrs. M. LeBannister

encl.

*mc



SUMMARY OF INFORMATION

Claim S12564241 - Douglas Wray

ISSUE:

Mr. Douglas Wray is claiming that his lung disability is related to his exposure to asbestos while employed with Ontario Hydro.

DIAGNOSIS:

Non-entitlement -

Acute bronchopneumonia and collapse of the left lower lobe.

March 10, 1980, thoracotomy and pleurectomy, anterior, apical and posterior.

HISTORY:

In June, 1980 a claim was established for Mr. Douglas Wray, age 46 and employed with Ontario Hydro since January, 1964 for chest disability. Information was received from Ontario Hydro indicating that Mr. Wray was recovering from a thoracotomy and pleurectomy as treatment for extensive pleural thickening. There had been a history of occupational exposure to asbestos and it was felt that these particular surgical interventions were necessary because of Mr. Wray's exposure to asbestos.

Initially his disability was diagnosed as acute bronchopneumonia which did not resolve and he suffered a collapse of the left lung. Due to a suspected carcinoma further tests were carried out by way of a thoracotomy and pleurectomy on March 10th, 1980. The results of the biopsy showed no evidence of any malignancy.

Mr. Wray was reviewed by the Advisory Committee in October, 1980 and they indicated an absence of any asbestosis. A pathology specialist was then asked to review the tissue and also concluded that there was no evidence that asbestos exposure had damaged Mr. Wray's lungs. Fibrosis of the kind seen in asbestosis was not present.

The Chief Consultant in industrial diseases reviewed the information on file and expressed the opinion that Mr. Wray was not suffering from any compensable disorder which could be related to his exposure to asbestos while



employed with Ontario Hydro. On February 17th, 1981, the Claims Review Branch concluded that there was no evidence to support that Mr. Wray was suffering from any work related disability and in particular, asbestosis and therefore there was no entitlement for payment of medical aid or compensation benefits as it was not established that the disability arose out of the employment.

DOCUMENTS:

1. Information from Consultant in Industrial Diseases, June, 1980:

The Consultant directed that the Records Department open a claim for asbestosis for Mr. Douglas Wray.

2. Report of Internist, February, 1980:

The specialist stated that Mr. Wray had a persistent cough since the early part of December, 1979 and had been on two separate courses of antibiotics without any clearing of his lung field. Mr. Wray described a tightness across his chest which appeared to be worse with deep breathing. A chest x-ray did show pneumonic consolidation. He had had occasional phlegm production which was whitish in colour and he had not had any hemoptysis.

On physical examination there was no jugular venous distention. Funduscopic examination was normal. There was no cervical or axillary lymphadenopathy noted. On auscultation of the chest bronchial breathing was noted over the posterior basal segments of the left lower lung field. No murmurs were noted. Liver and spleen were not palpable. There were no localizing neurological signs and the plantar response were laterally downgoing.

It was felt he had acute bronchopneumonia in the left lower lung field which seemed to be clearing clinically. A repeat chest x-ray would be done and this would be sent under separate cover to the physician. If the pneumonic consolidation was still predominant then he should have a bronchoscopy performed to make sure there was no obstructive lesion leading to the bronchus to the left lower lung field. This could be done as an out-patient in the hospital.



3. Report of Consultant, March, 1980:

Mr. Wray presented with a complaint of cough, some chest pain and a history of contracting pneumonia in December following which he was noted to have a collapse of his left lower lobe which had remained collapsed.

On examination there was dullness over the entire posterior aspect of the left chest and there was decreased almost absent breath sounds in the base of the left chest. Review of the chest x-ray showed what appeared to be a pneumonitis involving the left lower lobe and persistent collapse since that time.

The opinion was that he had obstructing lesion causing collapse of his lower lobe. It was recommended that he undergo a bronchoscopy and mediastinoscopy as soon as possible.

4. Report of Pathologist, March, 1980:

Six specimens were submitted for study to the pathologist.

Sections from pleura and pericardium showed dense fibrous plaques. In some areas they were completely acellular. In others the fibruous tissue was looser and there was infiltration with histiocytes, lymphocytes and plasma cells as well as capillary blood vessel proliferation. These plaques were typical of the fibrous plaques seen in persons exposed to asbestos fibres. The lung tissue showed atalectasis, fibrous and focal collections of iron pigment in which a considerable number of asbestos fibres were identified. The lymph nodes showed preservation of the architecture and mild reactive hyperplasia.

5. Report of Company Physician, June, 1980:

The physician stated he was submitting a claim on behalf of Mr. Wray and was enclosing a copy of a recent file memo. Mr. Wray was currently recovering from thoracotomy and pleurectomy as treatment for extensive pleural thickening. He had a history of occupational exposure to asbestos and had been followed by the Industrial Chest Disease Service Surveillance programme of Ontario Hydro workers who had in the past been exposed to asbestos fibres.



The physician stated that in 1949 Mr. Wray left school at age 16 and then did farming up intil 1952. From 1952 to 1953 he was working in construction as a labourer on an industrial site. From 1952 to 1964 he worked at a car dealership and in 1964 he joined Ontario Hydro at the R.L. Hearn generating station as a craftsman helper. In 1974 he became an apprentice welder at the same generating station. Mr. Wray had advised the physician that in his job as craftsman helper he was involved in broiler maintenance and stripping of asbestos lagging from the boiler and steam pipes.

The physician stated he visited Mr. Wray at his home. Examination of the chest revealed unequal expansion with deminished chest movement on the left. There was a left thoractomy scar. On auscultation breath sounds were diminished on the left from the area of the operative incision down to the lung base. There was some tenderness along the left costal margin and in the left upper quadrant. His blood pressure was 160 over 90 in the right arm when he was supine. His heart rate was 88 per minute and the rhythm regular.

The diagnosis was extensive thickening of the lung pleura requiring pleurectomy in a man with occupational history of asbestos exposure. The diagnosis presented by the treating surgeon was pleural asbestosis.

The physician stated Mr. Wray was still in a post-operative recovery. He would like to see him before he returned to work. He anticipated there would be some exertion or limitations placed on him when he returned to work.

6. Report of Company Physician, June, 1980:

The physician stated Mr. Wray had been employed by Ontario Hydro as a craftsman helper, a welder and a mechanical maintainer from January 20th, 1964 to the present. During this period he was regularly involved in boiler maintenance and the removal of asbestos boiler skin casings. In addition he had worked regularly on steam piping repairs and removed asbestos lagging.

Exact exposures were difficult to estimate. However, he was exposed to asbestos, Crysotile and perhaps Amosite, on a regular basis throughout his years of employment with



Ontario Hydro.

Asbestos work procedures began to change in the early 1970's at Ontario Hydro to minimize exposure.

7. Employer's Report of Occupational Disease, July, 1980:

The employer stated that from January 20th, 1964 to December 14th, 1972 Mr. Wray was a craftsman helper, from December 14th, 1972 to October 17th, 1974 a welder, from October 17th, 1974 to October 28th, 1975 a C.M. trainee, from October 28th, 1975 to October 28th, 1977 a S.M. 11 from October 28th, 1977 to the present S.M. 1. All the work took place at the R.L. Hearn generating station.

8. Opinion of Chest Disease Consultant, August, 1980

It was stated that the medical reports indicated Mr. Wray had investigation for a consolidation or collapse of the lung. Mediastinoscopy, bronchoscopy were negative. He then had a thoracotomy. The pathological tissue showed fibrous plaques of the pleura and pericardium, reactive lymphadenitis of the lymph nodes and the lung biopsy showed atelectasis fibrosis and asbestos fibres.

Before listing the claim for examination by the Advisory Committee it was felt that information should be obtained from Mr. Wray and his employer as to whether he was exposed to asbestos in his work place, for how long and to what extent.

9. Information from Mr. Wray, August, 1980:

Mr. Wray claimed he was exposed to asbestos for a few days a week while repairing boilers. In the early days they handled blocks that were asbestos and in subsequent years they had been using a powder substance which also contained asbestos.

Mr. Wray stated that the maintenance supervisor and two workers could support his statement.



10. Report of Advisory Committee on Occupational Chest Diseases, October, 1980:

The report stated Mr. Wray was examined October 9th, 1980. He complained of breathlessness on hurrying, daily morning cough with scanty yellow-white stringy sputum. There was no hemoptysis or wheeze. There was tenderness in the left nipple area with needle like pains. He was generally tired. A hacky cough developed last fall followed by shortness of breath and pain in the left posterior chest. The family physician treated him for pneumonia but since there was no change on the chest x-ray he was seen and further investigated by an internist.

On physical examination there was marked reflective error on fundi examination. Other general examination was normal. There was a scar in the left axilla. There were no abnormal auscultaroy sounds but there was a flat percussion noted with depressed breath sounds in the left posterior base.

Survey films were available from 1968 to 1978 and had been reported normal. A March, 1980 film from the hospital showed pleural thickening and effusion in the left lower chest with some decrease in effusion and pleural markings by October 9, 1980 but with a continuing elevation of the left hemidiaphragm. A review of the March, 1975 and earlier films failed to show pleural thickening anywhere.

Mediastinal node biopsy report from March 6th, 1980 indicated carbon pigment in the reactive lymph nodes but no evidence of malignancy. The diagnosis was reactive lymphodenitis.

Resting tests were within normal limits. The exercise test showed ventilatory and cardiac responses within normal limits although the minute ventilation and repsiratory frequency were at the upper border of reference values. There was no oxyhemoglobin desaturation during exercises. General fatigue was stated as a limiting complaint during work.

There was no absestosis but pleural plaques and pleural thickening. It was recommended he be re-examined in one year.



11. Opinion of Consultant in Industrial Diseases, December, 1980:

The Consultant stated he reviewed all the medical evidence and more than one document tried to leave the impression that the surgery was performed because of suspected asbeostos effects. It was clear that the surgery followed, and was a result of, some consolidation of the left lower lobe which was diagnosed as an acute bronchopneumonia. This did not appear to resolve there appeared to be collapse of the left lower The attending physician suspected a cancer. He also reported no pleural thickening of such could be seen only minimally without any definite calcification. It was clear therefore that the operation was performed not to primarily release or strip pleura. One of the specialists had noted that there was no obvious pleural thickening on the x-ray prior to the operation. The findings at thoracotomy in other words represented but not infrequent changes found many insulators who had been exposed to asbestos, i.e., pleural plaques, pleural thickening, but no asbestosis. These findings of themselves did not justify a thoracotomy.

The Consultant stated he would like the Chief Pathologist to review all the tissue here. The reports on the tissue from the local pathologist were incomplete and too scanty to be of much value.

12. Report of Chief Pathologist, January, 1981:

The Pathologist stated that he received 12 slides stained with haematoxylin and eosin and fragment of pleural tissue and of a lung biopsy. The tissue was identified as coming from the left lower lobe, the left pleura, the pericardium and the mediastinum. The findings were of pleural plaques which were old and cellular and recent organizing with overlying fibrin that was marked. There was also pericardial plaque which was recent organizing with overlying fibrin and marked. It was stated that the findings must be interpreted with caution. A biopsy was necessarily small and might not be representative of the tissue sampled. This was particularly so in a biopsy of a lung for the biopsy must necessarily be taken from the subpleural region and may not reflect the state of the anterior of the lungs.



The pathologist stated that he did not have an account of the operative findings or x-rav reports to indicate the appearance and extent of the serosal plaques. He noted that Mr. Wray did have a pleural effusion but did not know if there was widespread deposition of fibrin on the pleura, or if the fibrin was evident only on the plaques. He had retained unusually large numbers of asbestos bodies in his lung. Even a few hundred aslestos bodies in a 5 gram sample of lung indicated heavy exposure to asbestos and Mr. Wray had 16,500 in such a sample. There could be no doubt that he had been heavily exposed to asbestos. There was no evidence that this exposure had damaged his lungs. Fibrosis of the sort seen in asbestosis was not present.

The pleural plaques consisting of coarse, acellular collagen were typical of asbestos disease. In view of Mr. Wray's heavy exposure to asbestos, they probably were caused by asbestos although such plaques could be a residue of infection or be caused in other ways. Such plaques were not known to cause disfunction.

The cellular plaques were not typical of asbestos disease. They could be caused by any severe local or generalized fibrinous pleurisy. Asbesto could cause pleurisy and pleural thickening coulfollow and so Mr. Wray's pleurisy and cellular plaques could be due to asbestos but other causes of the pleurisy was possible.

It was not known that pericardial plaques were on the pulmonary side of the pericardium and associated with Mr. Wray's pleurisy or if they were on the cardiac side and he had also pericarditis. The cellular plaques were very active. They would probably mature into quiescent plaques but it would be well to follow their evolution to ensure that progressiv disease was not overlooked.

The anthracosis was slight and of no functional importance. The mediastinal lymphnode biopsy showed no significant abnormality. Thus Mr. Wray showed clear evidence of marked exposure to asbestos. The biopsy did not show asbestosis or any other significant fibrosis of the parenchyma of the lung. Mr. Wray had typical asbestos plaques. He also had organizing plaques not typical of his asbestos disease, possibly secondary to



asbestos-induced pleurisy, possible due to some other cause.

Opinion of Consultant in Industrial Diseases, February, 1981:

The Consultant stated that the chief pathologist had confirmed the impression that there was no asbestosis present. The attending surgeon noted to himself that there was no obvious pleural thickening on the x-ray prior to the operation and the operation was undertaken in order to resolve a diagnostic problem, i.e. the possibility of cancer. Cancer was not present nor was asbestosis present.

The Consultant stated it was his understanding that in the past where an operation was performed for a diagnosis and the diagnosis confirmed the necessity for the operation because of some compensable change, then the Board would be responsible. In this case the diagnosis did not support the need for an operation although the biopsy showed evidence of pleural plaques which were not infrequently seen in those who were exposed to asbestos.

The impression was that a pneumonia could be accompanied by pleuritis and the pleuritis found in this operation could have been due to inflammation and not a reactive pleuritis due to asbestos exposure. On the other hand as the chief pathologist stated the recent pleuritis might have been a reactive pleuritis from the presence of asbestosis fibres if this had been left along it might have resolved on its own. Mr. Wray was still not back to regular work despite the fact that the Advisory Committee in October, 1980 found that he had no impairment.

It was not possible to recommend that the Board accept responsibility for this claim as it now stood. The prolonged lay off seemed to have no organic basis. The consultant supposed, with no little benefit of doubt, some thought could be given to covering the time in hospital and a suitable convalescent period. This was said with some reservation because he was reluctant to suggest responsibility being taken in a claim involving an operation that was quite likely in the future to make the man worse than he was before and when the findings at operation failed to disclose



significant asbestos induced pathology which in isolation would not justify such a procedure.

Claims Review Branch Decision, February, 1981:

The Review Branch concluded there was no evidence to support that Mr. Wray was suffering from any work related disability and in particular, asbestosis and under the circumstances they were unable to accept entitlement for payment of medical aid or compensation benefits.

BENEFITS:

Nil.

Mrs. M. Van Den Hoogen*jab Appeals Administrator

March 12th, 1981



2 Bloor Street East Toronto, Ontario M4W 3C3 Telephone (416) 965-8915

The Workmen's Compensation Board



August 17, 1981

Mr. Douglas Wray 942 Reytan Blvd. BAYRIDGES, Ontario LlW 1Y7

Dear Mr. Wray:

Claim S12564241

Mrs. M. Fairchild mc

Enclosed please find an Appeals Adjudicator Decision rendered on the appeal of the above noted claim.

Your file has now been referred to our Claims Services Division for action, should you have any further enquiries, you may call 965-8804.

Yours very truly,

Appeals Administrator

Mrs. M. Jeurchild

encl.



THE WORKMEN'S COMPENSATION BOARD .

An appeal by Mr. Douglas Wray, Claim S12564241, against the Decision of the Claims Review Branch, dated February 17, 1981.

APPEALS ADJUDICATOR

DECISION

Mr. Douglas Wray is claiming that his lung disability is related to his exposure to asbestos while employed with Ontario Hydro.

In June, 1980 a claim was established for Mr. Douglas Wray, aged 46 and employed with Ontario Hydro since January, 1964, for chest disability. Information was received from Ontario Hydro indicating that Mr. Wray was recovering from a thoracotomy and pleurectomy as treatment for extensive pleura thickening. There had been a history of occupational exposure to asbestos and it was felt that these particular physical interventions were necessary because of Mr. Wray's exposure to asbestos.

Initially his disability was diagnosed as acute bronchial pneumonia which did not resolve and he suffered a collapse of the left lung. Due to a suspected carcinoma, further tests were carried by way of a thoracotomy and pleuroctomy on March 10, 1980. The results of the biopsy showed no evidence of any malignancy.

Mr. Wray was reviewd by the Advisory Committee in October, 1980 and they indicated an absence of any asbestosis. A Pathology Specialist was then asked to review the tissue and also concluded that there was no evidence that asbestos exposure had damaged Mr. Wray's lungs. Fibrosis of the kind seen in asbestosis was not present.

The Chief Consultant in Industrial Diseases reviewed the information file and expressed the opinion that Mr. Wray was not suffering from any compensable disorder which could relate to his exposure to asbestos while employed with Ontario Hydro. On February 17, 1981, the Claims Review Branch concluded that there was no evidence to support that Mr. Wray was suffering from any work related disability and in particular, asbestosis and therefore there was no entitlement for payment of medical aid or compensation benefits as it was not established that the disability arose out of the employment. It was this decision that was now being appealed.

Subsequent to the decision of the Claims Review Branch, Dr. Michael C. Wills, Staff Physician, Ontario Hydro Health Services, requested Dr. Michael Hutcheon, Chief Pulmonary Division, Wellesley Hospital to review the case material and examine Mr. Wray at Dntario Hydro's expense. A copy of Dr. Hutcheon's report was en-



Claim S12564241 Douglas Wray

Page 2

closed which concluded that Mr. Wray's "pleural disease was quite compatible in total, and typical in part of asbestos related pleural disease". Dr. Wills confirmed that he endorsed the opinion expressed by Dr. Hutcheon and confirmed support for Mr.Wray with regard to his appeal.

As a result of this new medical evidence, the Chief Consultant in Industrial Disease once again reviewed the claim. Having regard for the further medical submissions, as well as the fact that the Advisory Committee, on March 31, 1981 agreed that the pleural effusion was, in all probability, due to asbestos dust inhalation, the Consultant concluded that entitlement for the pleural effusion was acceptable.

The Appeals Adjudicator has now had the opportunity of reviewing all the information on record. In view of the most recent medical submissions and opinions, the Appeals Adjudicator finds that Mr. Wray does have entitlement for the pleural effusion which was due to asbestos dust inhalation which he was exposed to while employed with the Ontario Hydro.

The appeal is allowed.

DATED at Toronto, Ontario, August 12, 1981.

A. G. Simpson:sjh (6a)

Appeals Adjudicator



APPENDIX II (A)

DOUG WRAY - PATHOLOGY REPORT



AJAX ONTABIO DUGLAS 80 5304

PRATHOLOGOPHADHOODLYD BR PICKERING

PATHOLOGOPHADHOODLYD BR PICKERING

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NAVIS WRAY WIFE

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CEGNCHCSCOPY AND HEDIASTINOS

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NAVIS WRAY WIFE

B24570 S-512-80

PATHOLOGOPHADHOODLYD BR PICKERING

RE

NAVIS WRAY WIFE

B2512-80

PATHOLOGOPHADHOODLYD BR PICKERING

RE

HARCH 10th, 1980

DATE

HARCH 10th, 1980

DATE

HOSP.NO. 80 5304

SDESCRIPTION:
Submitted for quick section from the pericardium is a segment of thickened whitish,
pericardial tissue which measures 5 cms., in greatest dimension.
Quick section diagnosis - fibrous plaque, consistent with exposure to asbestos.

The second specimen from the same patient consists of two irregular fragments of pleura, which bear thick whitish fibrous plaques, the larger of which measures 10 cm., in greatest dimension.

Quick section diagnosis - benign fibrous plaque, consistent with exxposure to aspestos.

The third specimen from the same patient is from the left side and consists of similar paricardial tissue, the larger of the two fragments measuring 4 cms., in greatest dimension Representative sections are labelled \$3.

The fourth specimen is from the lower lobe of the left lung and consists of a wedge shaped segment of congested lung tissue, which measures 5 cms., in greatest dimension. Representative sections are labelled 4.

The fifth specimen is labelled 5. It is a biopsy of the left anterior mediastinum and condsts of two pigmented lympxhnodes, each of which measures 1 cm., in greatest dimension. They are entirely embedded.

The sixth specimen from the same patient is a biopsy of the posterior intercostal space and consists of two irregular fragments of pleural tissue which have thick fibrous plaques consists of two irregular fragments of pleural tissue which have thick fibrous plaques consists of two irregular fragments of pleural tissue which have thick fibrous plaques

OSCOPIC DESCRIPTION

Sections from pleura and pericardium, show similar histology. There are dense fibrous plaques. In some areas they are completely acellular. In others the fibrous tissue is "looser" and there is infiltration with histiocytes, lymphocytes and plasma cells, as well as capillary blood vessel proliferation. These plaques are typical of the fibrous plaques, seen in persons exposed to asbestos fibres.

The lung ticsue shows stalectasis, fibrosis and focal collections of iron pigment, in which a considerable number of asbestos fibres is identified. The lymph nodes show preservation of architecture and mild reactive hyperplasia.

MICROSCOPIC DIAGNOSIS

2 REV. 75

PLEURA AND PERICARDIUM

TUM - PIBROUS PLAQUES

LYMPH RODES

REACTIVE LYMPHODENITIS

LUNG DIOPSY

ATFLECTASIS

- FIEROSIS

- FIDROSTS

- ASBESTOSIS

Son Jan Markot Market M



APPENDIX III: MUIR

RE: DOUG WRAY





Che ske-McMaster Hox sital

Box 2000, Station 'A', Hamilton, Ontario LBN 3Z5

OPERATING:

CHEDOKE DIVISION Sanatorium Road (416) 388-0240

McMaster DIVISION Main St., West (416) 525-9140

May 1, 1981

MAY 25 1981

Dr. A. Yassi
Hamilton Workers'
Occupational Health Clinic
1071 Barton Street East
Hamilton, Ontario
L8L 3E2

Dear Dr. Yassi:

RE: WRAY, Mr. Douglas
942 Rayton Blvd.
Bay Ridges, Ontario LlW 1Y7
1.D. 3307-01-063

We have now had an opportunity to review Mr. Wray's clinical condition in the light of information received from the Ajax-Pickering General Hospital together with the corresponding x-rays of the chest which were obtained from the hospital. The pertinent facts are as follows:

- 1. Mr. Wray began work at Ontario Hydro's R.L. Hern Generating Station Division in 1964 as a craftsman's helper and as a welder. There is no doubt that he was frequently in contact with various types of asbestos in relation to boiler walls and sand ducts, turning turbine linings, etc. We discussed the day-to-day activities of his work with him. As is common in his trade, he was frequently required to strip and prepare asbestos insulation. Sometimes this would be on several days of the week and of course in the early days no form of respiratory protection was provided. We are therefore dealing with a worker who, without dispute, has been exposed to asbestos over a period of years.
- 2. He remained in good health until December 1979, when he became short of breath on exertion and developed a dry cough with occasional production of a small amount of sputum. Administration of antibiotics did not improve his condition. He was therefore referred for radiology and we have been able to examine films taken on January 22, 1980. These films showed a left sided pleural effusion with some compression of the underlying lung but without evidence of pneumonic consolidation. As you will know,



Dr. A. Yassi May 1, 1981 Page 2....cont'd

RE: WRAY, Mr. Douglas, I.D. 3307-01-063

Mr. Wray subsequently underwent bronchoscopy, mediastinoscopy and thoracotomy. At thoracotomy, the pleura was found to be widely thickened with chronic inflammatory tissue. Biopsy of the lung did not show significant parenchymal fibrosis but the degree of Mr. Wray's previous exposure to asbestos was indicated by the very large concentration of asbestos bodies noted.

Mr. Wray has gradually recovered from the operation but has been left with an extensive—left thoracotomy scar and persistent weakness of the muscles on that side of the chest.

In reviewing the cause of Mr. Wray's condition it seems highly probable that his initial presentation was that of a left sided pleural effusion of the type which is widely recognized as occurring in asbestos workers. He had very little evidence of bacterial infection at the time. There was virtually no sputum and a radiograph of the chest taken on January 12, shows a left-sided pleural effusion without pneumonia. The first diagnosis must therefore be of asbestos related pleural effusion and that his subsequent operation and absence from work should undoubtedly by attributed to occupational causes. These pleural effusions in asbestos workers are generally transient and do not come to thoracotomy. I am interested but certainly not surprized to note that considerable pleural thickening was noted in Mr. Wray's case at operation and suspect that similar findings would probably be the rule in other cases as well. Even the absence of a history of pleuritic pain of other than minimal degree is also fairly typical of this type of effusion. It has been interpreted as resulting from the chronic inflammation and thickening of the pleura which is already present in the thorax before the fluid accumulates.

His present clinical condition appears to have stabilized to an extent. His radiograph does not suggest significant parenchymal fibrosis of the lungs and this would be in keeping with the biopsy of the results obtained just over one year ago. However, the absence from work during the period of his illness last year and the residual muscular weakness on the left side are almost certainly work related and I believe he should be encouraged to appeal his case to the Workmen's Compensation Board.

Thank you for referring this case.

Yours sincerely,

.David C.F. Muir, M.D.



APPENDIX IV: WILLS

RE: DOUG WRAY





Mr. D. Wray _942 Reytan Boulevard BAY RIDGES, Ontario LlW 1Y7

Dear Mr. Wray:

Enclosed is a copy of my letter of May 5, 1981 to Dr. Dowd of The Workmen's Compensation Board. Enclosed with this letter was a copy of Dr. Hutcheon's opinions about your pleural disease as related to occupational asbestos exposure.

You will note that:

- Dr. Hutcheon felt that your condition was i) quite compatible with asbestos exposure
- Ontario Hydro Health Services will support your appeal when it is presented.

Yours truly,

Michael C. Wills, M.Sc., M.D., C.C.F.P., D.I.H.

Staff Physician

Health Services Department

Health and Safety Division

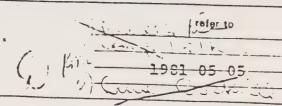
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592-2472, H2 F27



Dr. E.C. Dowd
Director, Medical Branch
14th Floor
The Workmen's Compensation Board
2 Bloor Street East
TORONTO, Ontario M4W 3C3

Dear Dr. Dowd:

Douglas WRAY
Birth Date: July 28, 1933
R.L. Hearn Generating Station
W.C.B. Claim: S12564241

In July 1980, Ontario Hydro Health Services initiated a claim on behalf of Mr. Douglas Wray an Ontario Hydro employee. This man had a history of asbestos exposure and developed pleural disease. He subsequently underwent thoracotomy and decortication.

In February 1981, the Claims Review Branch (W.C.B.) "concluded that there was no evidence to support that Mr. Wray was suffering from any work-related disability...and...were unable to accept entitlement for payment of medical aid or compensation benefits." I understand that Mr. Wray is considering an appeal of this decision to the W.C.B.

Ontario Hydro Health Services asked Dr. Michael Hutcheon, Chief Pulmonary Division, The Wellesley Hospital to review the case material and examine Mr. Wray at Ontario Hydro's expense. A copy of his opinion is enclosed.

Dr. Hutcheon concluded that Mr. Wray's "pleural disease was quite compatible in total, and typical in part of asbestos-related pleural disease."

Ontario Hydro Health Services endorses Dr. Hutcheon's opinion and will support Mr. Wray if he appeals the W.C.B. decision.

Yours truly,

Michael C. Wills, M.D. Staff Physician Health Services Department Health and Safety Division

MCW: dh



APPENDIX V

ASBESTOS PROCEDURE 1980 - R.L. HEARN G.S.



WORK PROCEDURES FOR REMOVAL OF ASBESTOS INSULATION R.L. HEARN TGS

Background

The asbestos sampling program in this plant has shown it is impractical to distinguish areas which contain insulating material which is asbestos free as opposed to areas where the insulating material is high in asbestos ie. greater than 5%. For this reason, all insulation will be treated as though it is high in asbestos.

Large jobs ie. stripping a turbine, will be sampled prior to the commencement of insulation removal. The maintenance procedure for the removal of the asbestos will then be followed in accordance with the asbestos levels found.

Smaller jobs, where sampling prior to insulation removal is not practical, a procedure which assumes the insulation is high

Procedures

- the asbestos is to be wetted down prior to removal and the floor gratings should be covered to prevent the insulation from being spread
- the area should be roped off and proper warning signs posted
- while properly wetting down the insulation keeps airborne asbestos fibres below the safe exposure limits, it is still mandatory that respirators be worn as an added safety precaution
- the work area should be vacuumed with a portable vacuum cleaner or swept clean while still damp upon completion of the work in order to prevent the spread of insulation after drying out
- all insulation which has not been identified as asbestos free should be put in plastic bags and stored in a designated area to ensure proper disposal
- employees working with asbestos should obtain new filters for respirators each time the filters are removed from the respirator, the used filters should be disposed of with the insulation
- disposable coveralls should also be worn in order to prevent the spread of asbestos. The coveralls should be removed before meal periods and disposed of along with the insulation at the end of the day.

Periodic sampling of the work area during insulation removal will be performed in order to ensure work procedures meet safe working limits.

R. Libson

Production Manager R.L. Hearn TGS

HM: ic





ontario hydro research division

To Mr. H. Makuch Superintendent

Chemical, Fuels & Environment

R.L. Hearn GS

ATTN: MR. W. WRIGHT

Sample No 80-880

INSULATION FROM UNIT #8 R.L. HEARN GS

Six samples of insulation were analyzed qualitatively for asbestos by microscopic and XRD methods. The results obtained are detailed below:

Sample	Asbestos Type	Concentration g/kg
#1, Reheat line to turbine	Amosite \$	450 457
#7, IP2 to LP west	Amosite & Chrysotile	160 // *** 270
#12, ID fan ducts	Chrysotile *	350
#13, boiler wall insulation 325 foot level	Chrysotile	140
#17, water feed pump discharge	Amosite §	780 73
#21, 1st pt heater	Crocidotile Z	580 58

Approved:

Submitted:

B. Pattenden

O.T. Melo Supervising Engineer Analytic Services Section Chemical Research Dept

B. Pattenden Technician Analytic Services Section

BP:il

DISTRIBUTION

Mr. H. Makuch R.L. Hearn GS CSS, 757 McKay Road, Pickering R.L. Hearn GS Mr. J.C. To Mr. W. Wright Mrs. S. Vekris Chemical Research

report no. 740633-233-538 August 26, 1980 833.71 CS80-1150-K

Mr. R.L. Hart Mr. B. Pattenden Chemical Research Chemical Research

Official Record





ontario hydro research division

Mr. H. Makuch Superintendent Chemical, Fuels & Environment . R.L. Hearn GS

Sample No 80-1130

INSULATION FROM UNIT #4 R.L. HEARN GS

Two samples of thermal insulation were analyzed qualitatively for asbestos by microscopic and XRD methods. The results obtained are detailed below:

Sample	Asbestos Type	Est Conc, g/kg
#1 LP Inner	Chrysotile	210
#2 LP Outer	Chrysotile :	710

Approved:

Submitted:

, john and

B. Fattenden

O.T. Melo
Supervising Engineer
Analytic Services Section
Chemical Research Dept

B. Pattenden Technician Analytic Services Section

BP:il

DISTRIBUTION

Mr. H. Makuch	R.L. Hearn GS
Mr. J.C. To	CSS, Pickering '
Mrs. S. Vekris	Chemical Research
Mr. R.L. Hart	Chemical Research
Mr. B. Pattenden	Chemical Research

Official Record



APPENDIX VI

ONTARIO HYDRO DIRECTIVE 1975



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THERMAL AND NUCLEAR STATION MANAGERS BRUCE HEAVY WATER PLANT MANAGER OPERATIONS MANAGERS, REGIONS

036 Revised

subject

Thermal Insulation Asbestos-Containing and Asbestos-Free

December 1975 BEDILA IL ILI December 1980

Introduction

System Maintenance Directive No. 036 of March 30, 1972 is updated to take note that asbestos-free thermal insulation is now the standard requirement in Ontario Hydro for new work and maintenance replacements. Lennox GS and Manticoke GS Units 5 to 8 were the first stations and units specified to have complete asbestos-free thermal insulation. Thus, it can be conveniently stated that stations or units with "in-service" dates after January, 1975 will be asbestosfree. Lambton GS, Pickering GS Units No. 1 to 4, and Manticoke GS Jnits No. 1 to 4 were completed during the transition period, with asbestos-free insulation being introduced as materials became wailable and state of work progress permitted.

The attached "Procedure for Working With Thermal Insulating laterials Containing Asbestos" thus applies to stations and units with in-service" dates prior to January, 1975. It should also apply when t is not known whether the insulation is asbestos-free.

This Directive and attached Procedure are modified to delete nformation relating to installation of asbestos-containing nsulation, but retain that relating to removal and handling of sbestos-containing insulation existing in stations.

The presence or absence of asbestos fibres can be determined y sending a few grams sample to Research Division for visual icroscope check, or where it may be a continuing requirement, the esearch Division could provide information on the microscope ccessory to enable identification at site by station personnel.

ite this directive applies to all functions covered by the authorized destribution etoctico nace. latter erite'r. Supte. Lines Engalther MC COL Foremen Foremen .. _puper.../high thuring the Mtce, heye jaken ad eitte .





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Installed thermal insulation, with few exceptions, is covered by a protective and appearance sheathing of metal, lagging fabric, or finishing cement. With this covering intact asbestoscontaining insulation is in a safe condition.

One exception to protective sheathing is a maintenance practice on some steam turbines where spray applied insulation is covered only by open mesh wire netting. Where the present insulation is asbestos-containing, deterioration of the surface will indicate that the insulation should be provided with a protective sheathing or replaced.

In addition to thermal or nuclear station usage, there has been some usage of asbestos-containing thermal insulation in regional plants, for pipe insulation, structure insulation and for combustion turbines.

The March 30, 1972 issue of the Directive required that Stations identify asbestos-containing thermal insulations and cements in station stores and consider their disposition. It is expected that holdings will now be at a low or nil level.

Where asbestos-containing thermal insulation is removed for access to flanges, bolting, etc, during maintenance work, it may be advantageous to increase the removal area to provide an asbestos-free zone to obviate the need for asbestos precautions in future dismantling.

Directive

- 1. When removing and handling asbestos-containing thermal insulation, all plant personnel should follow the "Procedure for Working with Thermal Insulating Materials Containing Asbestos" attached. This Procedure should be included in the documents for any contract where asbestos-containing thermal insulation will be removed by the contractor.
- 2. Any asbestos-containing thermal insulation in station stores shall be disposed of and the area vacuum cleaned to remove any asbestos dust.
- 3. Where a clearly defined thermal insulation area is changed from asbestos-containing to asbestos-free, this shall be identified in the station records.
- 4. All thermal insulation, insulating cements and insulation finishing cements purchased must be asbestos-free and should be chosen using materials from the Qualified Product: List "Thermal Insulation for Plant Equipment, Specification is



036 Revised

Procedure for Working with Thermal Insulating Materials Containing Asbestos

General

Various types of thermal insulation, including pre-formed pipe and block insulation, site mixed insulation, spray applied insulation, insulating cements, and insulation finishing cements, installed in Ontario Hydro fossil and nuclear stations with unit in-service dates prior to 1975, contain asbestos because of its high heat resistance and its fibre qualities as a reinforcing medium. Where this type of insulation has been used, some contamination by asbestos fibres of air and materials in the work area will occur during removal, or with mechanical damage in service. When asbestos dust is inhaled into the lungs, it produces, after a number of years, thickening of the lung tissue and increasing breathlessness. The disease so produced is known as asbestosis. The greater the exposure on average, the shorter the time before the disease appears. Inhalation of any asbestos dust should be prevented if at all possible; excessive inhalation of asbestos dust carries a significant health risk. The widespread use of asbestos-containing thermal insulation in Ontario Hydro thermal generating stations with unit "in-service" dates prior to January 1975, requires special procedures at these stations to avoid airborne asbestos dust in areas where persons may be exposed to the hazard.

The Procedure is oriented to fossil fired generating stations, but also relates to nuclear stations, the heavy water plant and combustion turbines.

Prevention of Exposure

To ensure that asbestos dust concentration is controlled to an acceptable level in areas where asbestos-containing insulation is being removed, sample dust monitoring shall be carried out at the discretion of the Station Manager.

It is recommended that this be done on all major removal of asbestos-containing insulation such as occurs on steam turbine cylinder or steam chest work, where block or spray insulation has been used (rather than insulation blankets or insulation secured in metal containers), until test results indicate that procedures have been established to a satisfactory level. Some thermal stations have their own monitoring equipment and some monitors may be available from the Research Division has the equipment to check the samples within a few



036 Revised

days. However, on most maintenance work the results will not be available until after the work is completed, thus this information acts more as a quide on whether more attention is required on future similar work.

2.1 Control of Dust

Dust created by removing of asbestos-containing thermal insulation shall be removed promptly by means of industrial vacuum cleaning equipment. Stirring up of the dust by sweeping shall be avoided. In areas which cannot be reached with vacuum equipment, and where sweeping is permitted, floors must be sprinkled with dustbane or equivalent and respirators must be worn.

Asbestos dust must not be created unnecessarily, and where feasible, the asbestos-containing material shall be wetted. Care must be taken to not create an asbestos slurry by wetting to excess. Such slurry will dry out later and release dust.

2.2 Good Housekeeping

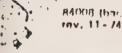
Stripped asbestos-containing insulation shall be removed to a dust proof container as soon as possible. Damping or wetting of waste before disposal is recommended. Dust covers shall be placed over open floor-type gratings to prevent the passage of removed insulation to other areas below.

2.3 Employees in those stations with asbestos-containing thermal insulation must be instructed in the need for care when handling materials containing asbestos, and in the safe methods of disposal of these materials.

0 Removal of Asbestos-Containing Thermal Insulation

- 3.1 Work which requires the large-scale removal of asbestoscontaining thermal insulation, eg, from turbine casings, turbine steam chests, feed water heaters and boiler drums, requires procedures as follows:
 - 3.1.1 The work area must be roped off as a restricted area during removal and until clean-up has been completed, with signs hung at intervals labelled "Danger Asbestos Respirators Required".
 - 3.1.2 All men working in the restricted area, within twenty-five feet in any direction from the





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> insulation removal operation, must wear an approved respirator.

- 3.1.3 Other work of dismantling in the area should await removal of insulation and clean-up of the area.
- Insulation that is removed should be taken off in 3.1.4 as large lumps or sections as possible and be put into containers for removal. Dropping of lumps must be avoided, particularly where dust fallout may be carried by air currents to other areas.
- 3.1.5 Where it is not possible to stop fallout to the floor below, the affected area of the floor below should be roped off, and if air currents are present, it may be necessary to hang tarpaulins to contain the dust.
- Clean-up of the restricted area and any fallout to 3.1.6 the floor below the restricted area must be performed as soon as possible, using a vacuum cleaner for small lumps and fine material.

Respirators

Due to the microscopic size of asbestos dust particles, many respirators are unsuitable. The approved type is available from Central Stores and listed in the Standard Stores catalogue.

Disposal

0

Asbestos is practically indestructible, having great resistance to heat and the elements, and is almost immune to forces of corrosion and decay. The fine, fibrous dust of asbestos is carried readily in air currents and is eminently respirable. Disposal of asbestos waste is a special problem; it cannot be destroyed by burning - the residue dust will only be emitted to the air; it cannot be dissolved and it resists wear and decay. The waste material should be moved in boxes or plastic containers, and be deposited in a dump where it should be covered. Asbestos dust on clothing should not be brushed off, and must be removed by vacuum cleaning with a unit equipped with filters. The filters of vacuum units or of respirators should be disposed of as soon as possible after use.





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279-73", latest revision. (At time of issuing, the current revision is June 26, 1975, copy attached.)

. Mechanical Maintenance Engineer

Enc

Recommend for distribution to:

All supervisory levels involved in removal and specifying of thermal insulation. Stores supervisors involved in purchasing thermal insulation.

cc: Director of Thermal Operations
Director of Nuclear Operations
Manager - Safety Department



APPENDIX VII

ASBESTOS SURVEY

MECHANICAL MAINTENANCE DEPARTMENT R.L. HEARN G.S.



ASBESTOS REPORT SURVEY

(conducted in May and June 1981)

Mechanical Maintenance Shop Stewards

D.Schetakis and E.Girdauskas



ASBESTOS SURVEY SUMMARY

Over the past year there have been alot of questions raised by mechanical maintenance about the procedures which have existed to to dael with asbestos. These questions were raised at mechanical maintenance safety meetings and at the joint Health and Safety meetings.

The members of mechanical maintenance have found the answers given at these meetings to be somewhat less than accurate. Through discussions within the mechanical maintenance section a concensus emerged that the record should be set straight. It was agreed that a survey might be the best way to accomplish this.

At this point, the stewards of mechanical maintenance took this matter to a monthly membership meeting. At this meeting, the stewards asked for and received permission from the membership to conduct such a survey.

SURVEY METHODOLOGY

The survey was to take the form of four questions concerning asbestos with a fifth question asking for comments.

Each member of mechanical maintenance was given a sheet of paper with these questions, preceded by a small introduction. It was felt this was a serious matter so it was also decided that the persons name and signature should appear on the survey. The survey was conducted before working hours in the morning and during the lunch break to avoid any conflict with management.



RESULTS OF

SURVEY

In safety and health and safety meetings over the past several months it has been managements position that we in mechanical maintenance have, since the early 70's been aware of the hazards of asbestos in this plant and as such proper worn.

All 36 mechanical maintenance personnel responded to this survey.

Approximately when was the first time you observed this type (Comfo II) mask being used by any employee in this plant?

> 1979 - 3 1980 - 32 1981 - 1 8.3% 89% 2.7%

2. When was the first occassion you wore this type mask or any mask that gave you adequate protection from asbestos?

1979 - 1 2.7% Never - 3 8.3% 1980 - 16 44.4% No Answer - 2 5.6%

3. Have you ever at any time prior to 1980 been informed by management of the hazards of asbestos and the high concentrations of it in this plant?

Yes - 1 Tola to use water 2.7%

4. Have you ever prior to September 1980 been aware of any Ontario Hydro Directive dealing with the hazards and handling procedures regarding asbestos?

Yes - 1 Told to use water 2.7%

No - 35 97.3%

5. Any comments you may have regarding these questions.

Name	-				
Signatu	re	•	•		



CONCLUSIONS OF SURVEY

We intend to present some conclusions here which can be derived from these questions. We will examine each question individually.

Question I

Prior to 1979 not one member of mechanical maintenance had ever seen the Comfo II mask. The majority (89%) saw these masks for the first time in 1980.

Question 2

Not one member of mechanical maintenance had worn this type or any type of mask which they felt gave them adequate protection from asbestos prior to 1979, contrary to what management said at the Health and Safety meeting of October 1980. It was not until early 1981 that mechanical maintenance personnel were fitted with these masks.

Question 3

No one in mechanical maintenance was informed of the hazards of asbestos or that there were high concentrations of it in the R.L. hearn prior to 1980, except for one person.

Question 4

Prior to 1980 no one in mechanical maintenance was aware of an Onterio Hydro directive dealing with the problems associated with asbestos. These results are totally contrary to what management has said at the joint Health and Safety meetings.

We should look at some background on this issue which led to our discovery of this directive. On June 4/80 a Department of Labour inspector made an inspection of the R.L.Hearn. In his report he referred to a directive which he would attach to his report. The directive was regarding 'The handling, removal and housekeeping



needed due to asbestos in the workplace.'

When the inspectors report was posted, this directive was not posted. Questions arose to its whereabouts and it was not till late October/80 that it was posted. Meanwhile, at the September 11,1980 joint Health and Safety meeting, R. Seaton asked, Is there a standard procedure for removal of insulation? H. Makuch replied that, There is no standard, however each station is responsible for their own procedures. R. Gibson advised that this is being developed and will be posted shortly. This would indicate that no procedure existed, but at the very next joint Health and Safety meeting managements position was that not only did a procedure exist but that it was also being used since at least 1972.

In a Workmens Compensation Board report on Mr.D.Wray, the board has the impression that procedures used in the handling of asbestos began to change in 1972 at the R.L.Hearn. The results of this survey would indicate that the Board has been misled.

We should also note here that all the union members of mechanical maintenance responded to this survey. This would indicate a high level of concern on their part.



RECOMMENDA II ONS

- 1. That copies of this summary be sent to ;
 - -R.L. Hearn Health and Safety Committee

-Workmens Compensation Board

-Ministry of Labour

-Royal Commission on Asbestos Related Matters

-Confederation of Canadian Unions

-C.U.O.E. & G.W. Head Office

- -C.U.O.E. & G.W. Local 110 files
- 2. That each member of mechanical maintenance receive a copy of this summary. This would assist individuals in the future workmens compensation cases because of the long latency periods involved with asbestos related diseases.
- 3. That Ontario Hydro be asked to provide a safe working environment at the R.L.Hearn G.S. by removing all asbestos from the premises. This removal should be accomplished using 'proper procedures' (complete partitioning, shower interlocks, etc.) as have been used in other major asbestos removal projects, such as at the Toronto International Airport.





SUBMISSION

OF THE

ENERGY AND CHEMICAL WORKERS UNION

TO THE

ROYAL COMMISSION ON MATTERS OF

HEALTH AND SAFETY ARISING FROM

THE USE OF ASBESTOS IN ONTARIO



INTRODUCTION

The first brief presented by the Energy and Chemical Workers Union to this Royal Commission recommended that the compensation of workers who suffer from asbestos-related diseases be handled by an agency other than the Workmen's Compensation Board of Ontario. That recommendation was not based upon logic, particularly since one would expect the Board to be the proper agency to handle this task. However, our experience over the last decade has made it clear to us that the Workmen's Compensation Board of Ontario is unable to deal with these cases in a rational and humane manner. Part of the problem may be the fault of the legislation itself, which is ill-designed and inadequate to meet the needs of the victims of industrial disease. However, it is our belief that the problems are deeper than that. We believe that there is an attitudinal problem at the Board--one that cannot be cured by legislative improvements. The W.C.B. has simply lost all credibility with workers in this province, including workers at Johns-Manville, as a result of the adversarial approach it has taken in the administration of claims. The Energy and Chemical Workers Union could not support any recommendation by this Royal Commission concerning compensation of workers suffering from asbestos-related disease which is left to the W.C.B. to carry out.



In the pages that follow, we will attempt to share with the Commission some of our experience with the Board. It is hoped that this will give the Commission some insight into the realities of the workers' compensation system as it operates in Ontario. It is certainly our belief that these experiences and similar experiences of other individuals and workers' groups justify the recommendations that we have made in this area.

RECOGNITION OF INDUSTRIAL DISEASE

Obviously in examining the question of compensation for work-related disease, one must begin by persuading the W.C.B. to recognize that any particular disease is related to occupational exposure. The brief presented by the O.F.L. will outline the struggles that have taken place in the past to establish that recognition in the case of asbestos-related diseases.

While the brief submitted by the W.C.B.

does not acknowledge or comment upon these battles, it

does present a rather uneasy picture as to the Board's

internal decision-making process. Although the W.C.B.

has recognized diseases, such as gastro-intestinal cancer,

which are still not without a certain measure of con
troversy, this seems to have developed in a rather

haphazard fashion. As portrayed by the internal docu-



ments filed with its submission, the Board's policy seems to have come about because of the recommendation of the consultant commissioned by the medical staff to review the literature on the subject. Undoubtedly, if the recommendation had gone the other way, the Board's policy would have as well. This pattern conforms to our experience with the Board's medical staff generally. Recommendations and opinions of Board consultants are inevitably accepted in claim matters in preference to any other source of medical opinion, however eminent or respected.

The disturbing aspect of this internal decisionmaking process is that it would appear that the people
who are making the critical recommendations concerning
recognition of diseases are the same people who appear
as Board consultants on individual claims disputes.
Thus the whole decision-making process is effectively
controlled by a select few trusted associates.

This fact cannot help but breed frustration among those who represent claimants in this province. It is simply unacceptable to have the medical experts responsible for making the initial recommendations concerning recognition of industrial diseases appear once again as the so-called "independent" consultants when controversial claims which challenge the accepted guidelines are made.



Perhaps this situation would be tolerable if it were not for the rigidity with which Board policies are applied after they have been formulated. Indeed, once compensation guidelines have been set for the recognition of industrial diseases, they virtually have the force of law in their application. Claims are denied unless they fit precisely within the framework established. We make this statement irrespective of the contention by the W.C.B. that each case is judged individually upon its own merits. We have seen no evidence that this is true. Claims for compensation which do not meet the exposure time requirements are invariably denied in spite of medical fact that disease can occur earlier in individual cases.

This strict adherence to a fixed set of criteria cannot be defended in the light of what is known and what is not known about the intensity of individual exposures suffered by individuals at Johns-Manville and the possible health effects thereof. No one can even begin to accurately pinpoint actual exposure for any particular employee at Johns-Manville and no one knows for sure what the effects of different types of exposure may be. The fact that studies have shown that the prevalence of disease occurs within a certain time frame does not mean that individuals will not react differently. This has virtually been ignored in the past.



ESTABLISHING DISABILITY

Once an industrial disease has been recognized by the Board and guidelines have been established for the adjudication of claims, the long and arduous process of establishing disability begins for those individuals who experience health effects from asbestos exposure.

Approximately 250 individual claims have been filed by Johns-Manville employees, or widows, for W.C.B. benefits. More than half of those claims were initially rejected because of "insufficient evidence" of occupational disease. The Board in its brief had indicated the criteria for acceptance of claims and these are rigidly applied as noted above.

Many of these claims are accompanied by medical reports filed on behalf of the claimant. These reports come primarily from family physicians although more specialists are being consulted now than in the past.

Much of the bitterness which is felt toward the W.C.B. is generated by the rejection of those claims which are supported by accompanying medical evidence. This is only natural when the Board is so insistent upon the need for such evidence but so cavalier in its treatment thereof.

The attitude of the Board's medical staff is that they



are the only ones in this province with the experience and training to give medical opinion on occupational health matters.

In making these comments, we do recognize that there is also an Advisory Committee on Chest Diseases which has input into decisions on claims matters. In fact, no claim has ever been allowed except with the recommendation of the Advisory Committee and we are not aware of any recommendation of the Committee which has been rejected by the Board's medical staff. Thus the two become intertwined and largely inseparable. As a matter of fact, in at least one case that we know of, a member of the Committee has acted as a Board consultant in a claims matter. Because the Advisory Committee is not perceived as maintaining an arm's length relationship with the Board's medical staff, its usefulness has been greatly eroded over the years.

The fact that outside medical opinion is always rejected (except to the extent that it supports the findings or opinions of Board doctors or consultants) is bad enough but the arrogance of the Board's medical staff does not stop there. Not only do they reject outside medical opinion out of hand, they feel free to attack the competence of those physicians in their medical management of patients. In at least two cases that we know of, the



Board's Chest Disease Consultant has criticized decisions made by claimants' doctors and suggested that they either did not know what they were doing or had prescribed incorrect treatments. Of course, all this is done within the shelter of internal memos that are buried in the claimants' files, but that does not detract from the offensiveness of this practice.

It is difficult at the best of times to convince medical practitioners to become involved in compensation matters. However, one can excuse such reticence if it is based upon knowledge that no useful purpose will likely be served by doing so. We presume that the W.C.B.'s reputation is well known in the medical community and, undoubtedly, this has had an impact upon the willingness of doctors to stick their necks out on behalf of asbestos workers in this province.

Because of periodic examinations conducted by the Ministry of Health, claims are reassessed continually and may eventually be allowed. This process may occur within months of an initial rejection or as long as five years thereafter.

It is not always easy to pinpoint what is the difference between compensable and non-compensable conditions. Function test results may be the same for those



who are rated as compared to those who are not. X-ray changes may be characterized as slight in both cases. Differences in results may not be remarkable, yet an employee could be considered non-compensable one year and be rated anywhere from 10-40% the next.

Initial rating has ranged from 10-40% with little basis for rationalizing differences, particularly between 10-20%. Both the latter ratings are characterized by the term "slight asbestosis", whatever that means. Decisions are based exclusively upon changes in x-rays and pulmonary function tests. No consideration is ever given to the life situation of the claimant in measuring disability. Factors such as age, education, personal habits, and the psychological impact of being disabled are ignored in spite of the conclusion of the Task Force on Occupational Respiratory Disease as to their relevance.

This narrow view has been particularly prejudicial to the employees of Johns-Manville, many of whom are in their late 40's or 50's when claims are established. These men, for the most part, have very limited education and have spent almost all of their working lives at Johns-Manville. They are virtually unemployable elsewhere because of both lack of training and the stigma of having worked at Johns-Manville. Because their disability ratings



do not reflect this reality, they have been forced to work at their regular jobs as long as possible. When they can no longer do so, they must live on the small pension received from the W.C.B. and whatever monies they get from Company benefit plans. In recent years, this has become an increasingly common situation as the Company has drastically curtailed its operations.

Many of these unfortunate workers would have left Johns-Manville as soon as they were aware that their health had been affected if their W.C.B. pension adequately reflected the true extent of their disability. Instead they were forced to continue working, to the detriment of their health, at physical jobs which they ought not to have been doing.

VARIANCE OF DISABILITY RATING

Claimants are reviewed periodically by the Advisory Committee which examines chest x-rays and pulmonary function tests and make recommendations to the Board concerning the appropriateness of the disability rating. These recommendations are inevitably adopted by the Board and are never overridden by any material, medical or otherwise, which the claimant may submit. Some claimants have seen their ratings progress, which is what is expected, given the nature of the disease; others have remained at the same level for as much as nine years.



Little study has been given to the possibility that asbestos exposure may give rise to a wide range of health effects beyond those presently accepted. As a result, cases where multiple medical conditions complicate the picture present the most difficulty and breed the most frustration for the claimants. Almost without exception, the residual disability attributable to asbestosis is low in relation to any other conditions. No one suffering from other medical conditions has ever been rated higher than 50%. Others have been found to be as much as 100% disabled but only 10% attributable to asbestosis.

It is our view that the approach adopted in these cases has been to start from the premise that if one is 100% disabled as a result of multiple medical problems, the function of the Board is to apportion that 100% among various causes. No recognition is given to the possibility that one might be totally disabled as a result of asbestosis irrespective of these other causes. In one case, a man who was using two cannisters of oxygen a week (which was being paid for by the Board) was still rated at only 40% because he also suffered from a number of other serious diseases, any one of which could potentially result in total disability.



Variance of a disability rating is based exclusively upon x-ray changes and/or pulmonary function test results. This practice is followed in spite of the growing body of expertopinion that chest x-ray abnormalities are of no value for the assessment of impairment or disability and the fact that pulmonary function tests measure only respiratory impairment, not disability (Task Force on Occupational Respiratory Disease, Report page 71-72).

Subjective complaints of breathlessness, chest pain, etc., are given no consideration whatsoever in the assessment of disability. While we do not expect the Board to base its decisions completely upon how the claimant says he feels, the fact is that there are limitations to the usefulness of so-called "objective" measures of the extent of disease in assessing disability. In any individual case, it is possible that the tests and x-rays will not reflect the total picture. It is in these cases where the Board ought to be relying more upon the claimant's physicians for advice. Instead the Board doctors dogmatically stick to the established criteria and question the competence of the claimant's physicians whose opinions run counter to their own.



SURVIVORS' BENEFITS

This Commission has heard considerable testimony from expert witnesses during Phase I of its hearings concerning the nexus between asbestosis and other causes of death. As with other aspects of our knowledge about the health effects of asbestos exposure, it is clear that assessing the role of asbestos exposure as a cause of death in any individual case is a matter of some controversy. Most deaths of asbestosis victims are attributed to causes other than that disease itself, although there is certainly room to argue that asbestosis was an important factor in these deaths. It is a question of how broad an approach one is prepared to take in assessing the involvement of the disease in bringing about the death of an individual.

It is in this area that the inadequacies of the legislation and the rigidity of Board policies are most dramatically apparent. In order to be entitled to a widow's pension, the Act provides that death must result from the industrial disease or the employee must have been in receipt of an award for permanent disability rated by the Board at 100%. While these qualifications have been adequate to deal with cases of death from lung cancer and mesothelioma, they have created much hardship for widows of asbestosis victims. As noted earlier, the Board's methods of disability rating result in very few asbestosis



sufferers being classified as 100% disabled. Thus when death occurs there is always a struggle with the W.C.B. over the granting of a widow's pension. This Commission has heard direct testimony from some of these widows concerning their plight.

The Board has always taken a very narrow approach toward awarding benefits to widows of asbestosis victims, particularly where there are competing causes of death which, at present, would be considered unrelated to asbestos exposure. Invariably these claims are rejected leaving the widows to wage a bitter battle throughout the appeal process which in the end will almost always prove fruitless. It is certainly our hope that this Commission will produce a Report which will call for a more flexible approach to assessment of the role of asbestosis as a cause of death.

More flexibility would alleviate a number of the problems discussed above but there still remain a residue of difficult cases where death cannot be attributed to asbestos exposure even though the deceased was in receipt of a permanent disability pension for asbestosis. Upon death, that pension, which may have been the principal source of family income, is immediately cut off. Needless to say this can only add to the pressures experienced by



the family in its hour of grief. However once the grief passes, most widows feel bitterness at this perceived injustice. There is simply no way to explain to these widows, whose lives have been torn apart by the tragedy of losing their husbands, that they are no longer entitled to receive the W.C.B. pension after his death.

It is our feeling that this situation must be addressed. The Government cannot continue to ignore the issue and it is our hope that this Commission, which has received first-hand evidence of the tragic circumstances many of these widows now find themselves in, will recognize their plight when it presents its final recommendations.

REHABILITATION

In 1976 the Board approved a Special Rehabilitation Assistance Program for asbestos workers (P. 56 of W.C.B. brief). This Program was introduced with a great deal of fanfare as a result of political pressure exerted from organized labour and the N.D.P. Interview teams spoke to 80 employees of Johns-Manville who "qualified" for the Program and created high expectations about what the W.C.B. was going to do for these people by way of rehabilitation.



As it turned out these expectations were unfounded. After conducting all of these interviews to explain the benefits available under the Program, it later turned out that 60% of those interviewed did not qualify for the Program because they were not employed in a "hazardous" area of the plant. In the intervening period between the announcement of the Program and the time for actual selection of candidates, dust levels in the plant had been considerably lowered to the point where only those employed in the transite pipe department were eligible. Needless to say, this caused a great deal of confusion and bitterness among those who had looked upon the Program as a way to eliminate the danger of continued exposure and as a means to finding more suitable employment. To say that the manner in which the W.C.B. handled the introduction of the Program was ill-considered would be a gross understatement.

Beyond that, it is clear that the whole concept of introducing this Special Assistance Program at Johns-Manville was ill-conceived. As the W.C.B.'s brief (P. 62) observes, the difficulties and limitations of a retraining program for older men with little or no formal education or experience other than at Johns-Manville are obvious. (It is interesting to note that although the Board seems to have come to this realization in connection with the



Rehabilitation Program, it is not reflected in its disability ratings as noted above.) Thus the Program was doomed to failure right from the outset, and it is certainly no surprise that the results have proved to be such a disappointment to date.

It is our submission that a retraining program for asbestos workers is an unrealistic method of dealing with those who become inflicted with asbestosis. prospects for successful "rehabilitation" are so bleak as to make the effort and expenditure involved pointless. On the other hand, we certainly do not condone the existing situation which presents workers suffering from asbestosis with the Hobson's choice of leaving their employment and all the benefits accrued over the years, with little or no chance of finding other work, or continuing to work at jobs which will become increasingly physically burdensome as time passes. We do not believe that this is good enough. The worker who has been robbed of his good health by his exposure to asbestos should not be forced to bear this additional burden while the employer who is responsible for this state of affairs has no obligation whatsoever to provide some form of relief.



ROLE OF EMPLOYER

By way of postscript, it is noteworthy that Johns-Manville has done nothing to assist workers in their battles with the W.C.B. Perhaps it would be naive to expect anything else.

WHITE PAPER PROPOSALS

As we all know, the Minister of Labour has recently tabled a White Paper on the Workers' Compensation Act which contains a number of proposals for amendment of the existing compensation legislation. We have outlined our experience with the W.C.B. under the present legislation. Professor Weiler, in his report to the Minister, indicated that much of the criticism of the Board arose as a result of inadequacies in the legislation. We do not believe that to be the case. It is our view that the problems we have described above will continue to plague asbestos workers and all other workers who suffer from industrial diseases. The concerns which we have expressed arise primarily in the administration of the legislation by those who are responsible for the day-to-day decisions that must be made.

It is our view that the proposals for amendment of the permanent disability provisions of the Act will, if enacted, prove to be disastrous for those suffering from



diseases such as asbestosis. To begin, the proposal concerning lump-sum awards cannot be applied to a worker who is suffering from a progressive illness such as asbestosis. How is one to arrive at a clinical rating to apply to the income ceiling to calculate the amount of the award when the degree of disability may get progressively worse with the passage of time? There is no indication in the White Paper as to how this problem will be addressed in the new legislation.

The proposal to go to an actual wage loss system as an alternative to the existing permanent lifetime pension based upon clinical rating also presents a series of problems peculiar to cases of industrial disease in general and asbestosis in particular. The system will obviously operate to encourage asbestosis sufferers to continue working as long as their health permits. We would not anticipate that the W.C.B. will be any more sympathetic or humane in its awarding of full pensions under the new system than it was in administering the clinical ratings. Thus the worker will be faced with little alternative but to continue working as long as any doubt remains concerning his ability to work. Of course, he will receive nothing during this period from the W.C.B. That may or may not be disturbing depending upon whether or not the lump sum can somehow be adapted to deal with this situation.



The more serious difficulties under the new proposals will arise further down the road when the disease becomes progressively worse and becomes intertwined with factors such as age, other medical conditions, developments within the workplace and the economy. The W.C.B. will be faced with some rather difficult decisions under the new proposals—decisions involving far more administrative discretion than any made at present.

To begin with, we have grave doubts about the ability of the W.C.B. to administer these proposals in accordance with the theory behind them. It's all well and good to say that the W.C.B. will provide a pension to replace actual wages lost, but how is the Board going to identify when such loss has occurred? Is the Board going to review claims annually and update earnings each year? If so, what will it use as a basis for comparison—earnings at the time of initial diagnosis or earnings prior to the time of the alleged loss, etc.? If not, will the onus be placed upon the worker to come to the Board and initiate the review?

At present, most of the arguments with the W.C.3. centre around the degree of disability. Under the new proposal those arguments will continue to arise, although in a different form. It seems to us that the argument will become one of attributing loss of earnings to the industrial



disease as opposed to some other factor. We have had a number of cases where workers rated as low as 10% have been forced to retire from Johns-Manville for health reasons. These health reasons may or may not include medical conditions other than asbestosis. If, for example, an asbestosis sufferer is forced to retire because of rheumatoid arthritis, under the new proposals he is entitled to no pension from the W.C.B. For this type of case, the new system is a disaster. The only benefit someone in this unfortunate position will get under the new proposals would be some kind of lump sum award.

Similar disputes will likely arise as a result of the curtailment of business activity at Johns-Manville. As the Commission knows, the number of people employed by the Company has declined substantially over the last 5 years. In fact, there are few, if any, asbestotics left at the Scarborough plant at present. The question which arises under the new proposals is whether these people are laid off for health reasons or because of curtailment of business operations. Thus it may well be that, in the future, those employees suffering from asbestosis who are laid off subsequent to implementation of the new proposals will get nothing whatsoever from the W.C.B.



These are only some of the additional issues that we perceive will arise under the new proposals. Undoubtedly there will be others as well. On balance, we would anticipate an escalation of the intensity of the conflict between the Board and claimants. While it is true that eliminating the clinical rating system will remove one class of dispute, it causes another class of disputes where the stakes are even higher. The fights will now be over whether or not the claimant is to receive any pension at all, rather than over the amount of the pension.

If our prediction proves to be correct concerning the volume of disputes likely to arise under the new proposals, we can at least draw some comfort from the provision for the creation of new independent appeal system that does not simply rubber stamp decisions of the Board medical staff or the Advisory Committee. Of course, that is the hope held out for the appeal tribunal. Whether it will work out that way, in practice, remains to be seen.

Finally, it should be noted that the White Paper does not present any specific proposals concerning the treatment of existing claims. The transition principles enunciated therein would seem to indicate that all



existing pensions will be frozen at current levels unless the pensioner elects to move into the new system. Obviously this will work to the detriment of asbestosis victims whose health may continue to deteriorate before an actual wage loss attributable to asbestosis manifests itself.

It is our view that the transition principles ought not to be applied to asbestosis sufferers. We feel that there is a difference between eliminating the possibility of additional inflation adjustments which applies to most permanent pensions and the adjustment of disability ratings as applied to asbestosis. Asbestotics should be allowed to continue to have their pensions upgraded based upon changes in their medical condition if they elect to be governed by the old system. It is bad enough that the Government is going to cut off inflation adjustments, but to go further and ignore subsequent deterioration is surely unduly harsh and not justified by the cost-savings involved.

GENERAL DISCUSSION

The issues which arise out of the obligation of society to compensate the victims of industrial disease can be extraordinarily complex. To attempt to resolve these issues in a logically precise and orderly manner is,



unfortunately, largely a fruitless exercise. Without reliable, accurate information, no system of workers' compensation can ever hope to cope with the demands made upon it. Answers to questions of diagnosis, assessment of disability, attribution of cause of death, etc., will almost never be clear cut, and subjective judgments will have to be made as to what information will be relied upon and how that information will be used. This will inevitably lead to dissatisfaction among those who are adversely affected by the outcome of those decisions.

This Commission has seen evidence of this kind of dissatisfaction expressed by a number of individuals and groups representing workers who have been exposed to asbestos, including the Energy and Chemical Workers Union. These individuals and groups have alleged that workers in Ontario have not been fairly treated in the assessment of compensation for asbestos-related disease. The Commission has also received an abundance of expert testimony, the effect of which has been to demonstrate how little is really known about the health effects of asbestos exposure. Thus, with the information that is available today, it is virtually impossible to determine whether those allegations made by workers are well founded or not. There is simply no positive scientific or medical evidence against which to measure the allegations.



In attending Phase II sessions of the Royal Commission, one could not help but be troubled by this deficiency of knowledge concerning the health effects of something which is as omnipresent as asbestos in today's society. All of the experts who have appeared before the Commission have stressed the limitations of the data which they present. Somehow it appears that we have allowed modern technology to become so far advanced that we cannot hope to catch up with the health effects generated by the exposure of humans to the products of that technology. There is little doubt that many workers, and perhaps others as well, have suffered the effects of asbestos-related disease without that fact being recognized by themselves or compensation agencies. There is every likelihood that this will continue to be the case in the future until the day comes when all the questions have been definitely answered, assuming this to be possible.

But what do we do in the meantime? We simply cannot place the burden on workers to produce the conclusive, scientific and medical proof that their claims to compensation are justified. Workers simply do not have the resources to fight these battles. Having said that, however, it does not necessarily follow that reversing the onus of proof will produce a different result. Industry



will continue to sow the seeds of doubt whenever possible. Dr. Kotin's presentation on behalf of Johns-Manville is an excellent example of this.

Given that state of affairs, it seems to us that some form of universal sickness and accident insurance may be the only way to ensure that workers receive adequate income security in the event that they are struck down by industrial disease. These victims of industrial disease cannot wait for the "experts" to produce answers to the questions of causation. They cannot wait while Royal Commissions ponder the evidence available and try to come up with a balanced set of recommendations. They cannot wait until governments decide to take the steps necessary to safeguard the health of their citizens and compensate the victims of industrial disease.

It is our view that society owes it to the victims of industrial disease to mitigate the tragic consequences of their illness wherever possible. If we can lighten their burden somewhat by providing a more stable system of income security that will not be preoccupied by the question of causation, then we should do that. It is truly the least that society can do for these people.





SUBMISSION

TO

THE ROYAL COMMISSION ON MATTER OF HEALTH AND SAFETY ARISING FROM THE

USE OF ASBESTOS IN ONTARIO

(WORKERS' COMPENSATION)

ONTARIO FEDERATION OF LABOUR, 15 GERVAIS DRIVE, DON MILLS, ONTARIO.

OCTOBER 1981.



INTRODUCTION

The Ontario Federation of Labour wishes to take this opportunity to address, once again, the issue of justice and fairness in the compensation of the victims of our society's failure to protect workers in the province of Ontario. The fact that there are two major inquiries going on at the same time into the operation of the Ontario Workmen's Compensation Board speaks to the fact that the Board has failed dismally in living up to its motto, " Justice, Humanely and Speedily Rendered."

We do not wish to speak in detail to the recommendations that were presented to Paul Weiler concerning the benefits levels, adjudication of claims and the corporate management of the WCB or our response to the recommendations for change presented in the government's White Paper. We attach a copy of our submissions for your consideration since they certainly impact on your deliberations about the current practices of the Board.

We do not intend to relate case after case of injustice and unfairness in the adjudication of asbestos-related claims since the victims, their survivors and their own affiliated unions can speak more eloquently on that subject. What we wish to do is review the philosophical and administrative problems that the Board has in dealing with occupationally-related disease claims and make recommendations for their correction.



As Paul Weiler stated in his first report;

"Industrial disease bids fair to be the major battleground of the next decade, exposing serious questions about the viability of workers' compensation."

Both industry and the Board attempt to minimize the problem of occupational disease in this province by pointing out that the disease claims made up only 3.4% of all the lost-time claims in 1980 and that accidents remain the major problem. When this is compared to the fact that "80% of the premature deaths among adult Canadian workers stem from diseases of one kind or another" or that "95% of the recipients of total disability benefits under the Canada Pension Plan are disabled by disease reather than accidents" (2) it becomes very clear that the real problem is a substantial underreporting of occupational disease claims to the Ontario WCB.

The fact that asbestos is perhaps the most researched and accepted occupational carcinogen, among the some 1,500 carcinogens in the workplace, provides a case study for reviewing the Board's ability to deal adequately with an occupational disease, but care must be taken not to assume that equal recognition is given to other occupational diseases. The recognition of asbestos-related diseases in Ontario has taken place over the last ten years in a highly charged emotional and political atmosphere and not in the rational, thoughtful climate that the Ontario Workmen's Compensation Board presented in their submission to the Royal Commission.



It should not be necessary for unions to have staff working almost full time on problem compensation cases for their members or that public battles take place over individual's claims, like the battle over the destroyed larynx of Aime Bertrand, from International Inco in Sudbury. The following arguments and recommendations are presented in an attempt to establish a system that provides just and fair compensation for the victims of our past and present neglect.

PHILOSOPHICAL APPROACH TO THE COMPENSATION SYSTEM

One of the major problems in both the regulatory agencies and the compensation system in Ontario in the field of occupational health has been the domination of physicians with their specialized training. Physicians look at the world through a well established public health model that focuses on the individual as patient and probes all of the outside influences that affect his or her health. In this model work, the environment, leisure activities, family life and community demands all impact equally on the individual to enhance or destroy his or her health.

Unfortunately, this does not represent the reality of industrial life. Work, in fact, determines many of the other influences that impact upon the individual's health.



It is not by chance that workers live near industrial plants and therefore experience more general air pollution in their environment. Work does far more than merely determine the hazards that one is exposed to on the job. Work determines where you live, what you eat, what you drink, how you spend your leisure time, your family's educational opportunities and even the nature of your family life. In other words, work is the major determinant of a worker's health and well-being rather than only one of a multiple of outside influences.

Industry has been able to play on the public health model to shift the blame for disease onto the victim by focusing on other aspects of their life and thereby absolving themselves of financial responsibility to clean up or provide compensation. The regulatory agency continues to focus on the individual's responsibility to ensure his or her health rather than to see their mandate to provide a workplace that is safe for all workers, including those that smoke, drink or are "hypersuseptible".

The Workmen's Compensation Board hides behind terms like "complex multiple etiology of disease" and their legislated requirement for an all-or-nothing judgement on occupational-relatedness to allow employers off the hook.

Instead of focusing on the individual in attempting to identify the causes of the worker's disease, the Board should begin to focus on the



workplace with the same scrupulousness in identifying potential exposures and interacting agents that contribute to illness and death. This, then, places the onus on the employer to prove that the workplace did not contribute to the disease instead of on the worker to prove that his or her illness was "due" to the nature of the work and not to something else.

The Workmen's Compensation Board maintains that that the "benefit of the doubt" is given to all claims and that "the injured workman does not need a preponderance of evidence in support of his claim so long as reasonable inferences can be drawn in his favour" however, the level of scientific proof required to establish an occupational disease claim is in direct contradiction to that statement.

Until there is an entirely different conceptualization of the issue of occupational health and the central role played by work in enhancing or destroying health, the Workmen's Compensation Board will not be able to deal fairly or equitably with the victims of occupational disease.

RECOMMENDATION 1.

THAT THE WORKMEN'S COMPENSATION BOARD SEE ITS MANDATE TO ACTIVELY IDENTIFY ALL ASPECTS OF THE WORKING ENVIRONMENT THAT CONTRIBUTES TO A WORKER'S ILL-HEALTH OR DEATH AND TO PLACE THE ONUS ON THE EMPLOYER TO ESTABLISH THAT THE WORKPLACE DID NOT CONTRIBUTE.



AN OCCUPATIONAL DISEASE SCHEDULE

The Workmen's Compensation Board established a schedule of designated occupational diseases as early as 1915. Unfortunately the schedule has not grown in response to the increase in scientific knowledge.

The Board does, in fact, recognize other occupationally-related diseases that do not appear on the schedule, however they choose to deal with them on an individual basis according to restrictive adjudication guidelines. Where the guidelines do not fit, the Board finds aternative explanations in the individual's lifestyle to justify their decisions.

This also means that individual workers and their representatives, who are able to involve the political process and the media can push the Board into a politically-motivated decision in their own case which does not always reflect in decisions about other cases.

The Ontario Workmen's Compensation Board recognizes a number of related diseases connected with exposure to asbestos in the workplace. They are perhaps the only jurisdiction to recognize related diseases like laryngeal cancer and yet few actual claims for laryngeal cancer have

been established with the Board, because of the restrictive adjudication guidelines.

Asbestos-related diseases should be included in the Shedule 3 of the Workmen's Compensation Act. Such inclusion would mean that any



worker who has been employed in an identified asbestos industry or occupation who develops a described disease, there shall be the automatic presumption that the disease arose out of the course of employment in that industry or occupation.

For example, the WCB stated in their submission to the Royal Commission on Asbestos that the Board had identified 31 companies as "having had a very hazardous exposure environment". The Occupational Health Branch of the Ministry of Labour provided the Board with a list of 99 employers "whose employees had some exposure to asbestos" and yet each time a claim is appealed it is up to the worker or his or her representative to prove that the worker was exposed even if he or she worked in one of those companies identified. As well occupations should be categorized for their potential exposures. Obviously an insulation worker should be presumed to have been exposed, instead of having to identify projects where asbestos was installed or removed. Similarly a communications worker should not be expected to remember all of the buildings where he pulled telephone lines through asbestos lined air plenums in order to establish exposure, it should be presumed that work in that occupation would entail exposure to asbestos.

It is the wording in the Act itself that prevents the expansion of the schedule. Section 118(8) states:



Presumptions as to disease being due to nature of employment

(8) If the employee at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the Schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved, but, except where the Board is satisfied that the disease is not due to any other cause than his employment in Ontario, no compensation is payable under this section unless the employee has been a resident of Ontario for the three years next preceding his first disablement. R.S.O. 1970, c. 505, s. 118 (8); 1973, c. 173, s. 1.

"at or immediately before" perpetuates the WCB's orientation to traumatic or acute responses to an event. Occupational diseases especially those related to asbestos exposure tend to be long-term or chronic, often not developing until twenty or thirty years after first exposure when a worker may well have retired or changed jobs.

"The disease shall be deemed to have been <u>due</u> to the nature of the employment" requires a level of scientific proof that is impossible to attain in the field of epidemiological research. It requires that the Board make an all-or-nothing judgement which the science cannot do.

Anyone sitt ing through the summer sessions of the Royal Commission on Asbestos realizes that epidemiology is not an exact science. In fact, it is a very crude measurement which identifies only sustantial increases in disease as measured against the background levels of disease in the compared population. Medicine is in no way a precise science either, and yet the Workmen's Compensation Board is requiring scientific proof of a cause and effect relationship that cannot be established. It is



probably fair to say that no "expert" who appeared before the Commission over the last three months could prove that any individual's disease was entirely due to their asbestos exposure.

The restrictive clauses in the occupational disease guidelines, that require continuous and repetitive exposure to asbestos over ten years or a latency time of 15 to 20 years from first exposure to onset of disease speak to that legal requirement that the Board has to establesh that the disease was <u>due</u> to work.

Take a smoking asbestos insulation worker who develops lung cancer.

He has only three years of "continual and repetitive" exposure to
asbestos before he moved to an office job. He develops lung cancer
fifteen years after his first exposure to asbestos. Given the Board's
requirement for 10 years of occupational exposure to asbestos, the
Board would probably rule that the lung cancer was not due to his
work and would point to his smoking as a cause to justify their denial.

What does the science tell us about this case?

- (1) All types of asbestos can lead to an excess lung cancer rate
 in those workers who are exposed, whether they smoke or not.

 (3)
- (2) Most independant researchers agree that there is a linear dose-response relationship between asbestos exposure and disease, and that the dose-response line probably intersects



- both axis at zero, so that there is no "safe" threshold for exposure to asbestos. (4)
- (3) Latency is a statistical phenomena found in epidemiology and does not represent the actual clinical fact of disease development in an individual's case. (5)
- (4) Smoking and asbestos interact to multiply the lung cancer effect, however there is a 79 to 80% probability that the asbestos caused the cancer. (6)

The only fact that can be stated with certainty is that the workplace contributed to the disease and that the benefit of the doubt should apply to grant that victim compensation. The onus is then placed on the employer to prove that the asbestos did not contribute to the disease.

An Occupational Disease Schedule states quite clearly the the Board recognizes the very real contribution made by the workplace to ill-health and can be used as an educational tool to inform workers, employers, physicians and the general public of that contribution.

RECOMMENDATION 2.

THAT THE PRESENT SCHEDULE BE MAINTAINED AND EXPANDED TO INCLUDE ALL OF THE OCCUPATIONAL DISEASES RECOGNIZED BY THE BOARD, INCLUDING ASBESTOSIS, LUNG CANCER, MESOTHELIOMA (PLEURAL AND PERITONEAL), GASTRO-INTESTINAL CANCER AND LARYNGEAL CANCER.



RECOMMENDATION 3.

THAT SECTION 118(8) OF THE WORKMEN'S COMPENSATION ACT BE AMENDED TO READ:

"IF THE EMPLOYEE IN ANY INDUSTRY OR OCCUPATION MENTIONED IN THE SECOND COLUMN OF SCHEDULE 3 AND THE DISEASE CONTRACTED IS THE DISEASE IN THE FIRST COLUMN OF THE SCHEDULE SET OPPOSITE TO THE DESCRIPTION OF THE INDUSTRY OR OCCUPATION, THE DISEASE WILL BE PRESUMED TO HAVE ARISEN OUT OF THE NATURE OF THE INDUSTRY OR OCCUPATION DESCRIBED."

A number of jurisdictions who have occupational disease schedules are considering the removal of any restrictive clauses that limit compensation eligibility. The European Economic Community passed a resolution on July 20, 1966, recommending the abolition of systematic restrictive conditions relating to the description of symptoms of disease, the type of activity stated to be capable of causing the disease and the periods of exposure to risk required in their lists and schedules of occupational disease. (7)

As well the Royal Commission on Civil Liability and Compensation for Personal Injury in the United Kingdom recommended that the restrictive conditions relating to the prescription of occupational disease should be removed. (8)

The Ontario Workmen's Compensation Board claims that their guidelines



were developed to facilitate inclusion of occupational disease claims in the system, however, it is our experience that in every case where the disease is recognized to be occupationally related, the Board has applied their criteria in a fairly rigid manner to deny the claim where the criteria is not satisfied.

The Workmen's Compensation Board cannot justify their criteria with scientific evidence. Their length of exposure criteria was criticized by a number of "experts" appearing before the Commission this summer, and we do not feel that it is necessary to repeat each and every statement made before the Commission to this effect.

As well, the latency requirements of ten years for lung cancer, fifteen years for mesothelioma and twenty years for gastro-intestinal and laryngeal cancer shows a lack of understanding of a statistical vs a clinical phenomena. Both William Nicholson and Julian Peto spent some time in their testimony showing that latency is a statistical concept. Latency assumes that nothing is going on in the individual's body until the clinicians are able to diagnose the disease. Latency identified through epidemiology, is merely a statistical statement that an excess of disease or death related to asbestos for example, has not shown itself to be statistically significant before a significant period of time has passed. That does not mean that any individual who develops the disease before that time should therefore, be excluded from compensation.



Asbestos exposure multiplies the background risk for the exposed population and for the individual for cancer, which means that relative risk curves rise as a function of dose and time and the time that the asbestos risk curve will intersect with the background risk curve to cause death will vary from individual to individual.

The fact that the Board has used Dr. Irving Selikoff's insulation workers' studies to determine the latency requirements for gastro-intestinal cancer and laryngeal cancer make no sense especially when Dr. William Nicholson one of Dr. Selikoff's colleagues at Mt. Sinai in New york stated quite emphatically to the Commission that attributable risk of cancer to asbestos exposure could be seen earlier than the statistics would show as significant. (9)

RECOMMENDATION 4.

THAT THE RESTRICTIVE ADJUDICTION CLAUSES THAT ARE NOW USED BY THE WCB TO LIMIT ELIGIBILITY FOR ASBESTOS RELATED DISEASE BENEFITS BE ELIMINATED.

Individual's background risk is determined by a number of factors including environmental pollution, lifestyle and hypersuseptibility.

However, it should be the role of the government to protect all workers, including even those most vulnerable. Dr. Donald Acheson, who prepared the health effects document for the British Advisory Committee on Asbestos told the Commission that "it should be no more dangerous to smoke on the work floor as in the board room, in an asbestos factory." (10) And Richard Lemen from Niosh in the U.S. stated that the Occupational Safety and



Health Act provides NIOSH with the authority to make "recommendations for providing a safe workplace no matter what the personal habits of an individual may be." (11)

Both employers and the government wish to emphasize the individual worker's reponsibility for maintaining their own health. Not only does this absolve them from taking responsibility for a "safe" workplace, but it overlooks the fact that The so-called destructive lifestyle problems that they wish to blame for disease are very big business with huge profits and huge advertising budgets aimed directly at workers as a consuming group. Nor do workers see the government wishing to forego their vast source of income by taking a tougher stand against the sale of these "destructive personal habits". Both industry and government have a financial interest in the sale of cigarettes, liquor and other leisure activities that impact on a worker's health. If the asbestos industry wishes to share its assesments with the tobacco industry then so be it, but it is time that the worker stop being victimized for a societal problem. Workers are the last groups to continue to smoke, and one ought to look at the nature of work that encourages that habit instead of blaming the victims of occupational disease.

A number of "experts" appearing before the Commission stated that smoking should not be considered in the adjudication of asbestos-related lung cancer cases, especially since the probability of asbestos causation was as high as 79 to 80% and the fact that smoking appears to have no impact



on the development of mesothelioma or gastro-intestinal cancer.

The "thin skulled plaintiff rule" must apply and focus must be placed directly on the workplace and its major role in determining all aspects of a worker's health.

RECOMMENDATION 5.

ARGUMENTS ABOUT LIFESTYLE, ENVIRONMENTAL FACTORS OR PERSONAL SUSCEPTIBILITY CANNOT BE USED TO DENY OR LIMIT COMPENSATION.

Another major problem in the compensation of occupational disease revolves around the issue of disability or "disablement arising out of and in the course of employment". With occupational diseases, especially chronic respiratory disease such as asbestosis, the disablement may not occur until after the worker has retired. Right now benefits are provided for permanent disability throughout a worker's life, however what Weiler and the government's White Paper recommend is that a person receiving a partial permanent disability rating would receive a lump sum payment only, unless earnings are lost and all benefits would cease at age 65 unless retirment earnings had been affected by the disability.

Take an asbestos worker who is diagnosed as having a 20% disability due to asbestosis. Because a worker cannot maintain himself on a 20% pension he continues to work until his retirement at 65. After retirement he becomes increasingly disabled and dies two years later of pneumonia.



What the White Paper proposes is that the worker would receive a lump sum payment for the 20% disability. Because he continues working and therefore looses no earnings there would be no long term pension. At retirement his increasing disability would be ignored since his retirement benefits had not been affected and it is very unclear what would happen to his widow at death. He was not receiving a 100% pension, he is no longer in the compensation system and his death while certainly related to his chronic lung impairment would probably be denied.

The asbestos worker's retirement was short and painful. If he had been say 50 years old when the lump sum payment was established, he would have received \$6,400 according to the White Paper as the total contribution from the WCB to a man who dies prematurely of an occupational disease.

Not only is that patently unfair to the victim and his family, what incentive is there for the employer to clean up.

RECOMMEDATION 6.

THAT THE WHITE PAPER RECOMMENDATIONS TO AWARD LUMP SUM PAYMENTS AND PERIODIC PAYMENTS FOR WAGE-LOSS ONLY BE REJECTED AND THAT THE FURTHER RECOMMENDATION THAT PERMANENT DISABILITY PENSIONS CEASE AT AGE 65 ALSO BE REJECTED.

It is also extremely important that recognition be given to occupational disease as a contributor to death from another cause. The practice to give survivor benefits only when the victim was receiving a 100% disability pension before death or where the victim dies from a recognized disease is unfair. If an asbestosis victim dies of cor pulmonale, or a respiratory



infection or another cause where the occupational disease makes treatment or surgery impossible, the presumption must be that the occupational disease caused the death and benefits must be given to the spouse and dependant children.

RECOMMENDATION 7.

WHERE THE OCCUPATIONAL DISEASE CONTRIBUTED TO A VICTIM'S DEATH IN ANY WAY, DEATH BENEFITS SHOULD BE GIVEN TO THE SURVIVING SPOUSE AND DEPENDANT CHILDREN.

Another significant problem in the issue of disability is the "meat chart" approach that ignores individual differences and differing demands of each job. A 20% asbestosis claim may mean that one worker is able to continue to work at his old job with no extra effort on his part, while another worker may be unable to perform his job that requires great physical exertion or perhaps the extended use of a respirator.

The WCB uses x-rays and lung function tests in a clinical setting to determine a rating of disability. Not only are the tests given not particularly sensitive to be able to determine individual differences, they completely ignore factors such as age, education, mobility, and the emotional or phsychological impact that a respiratory impairment may have. They have no conception of what each job may entail and assign some arbitrary % based on clinical findings that can bear no relationship to actual disability.



As well, the % disability award is often reduced because the victim suffers from a chronic obstructive lung disease such as chronic bronchitis. The Board determines that obstructive lung disease is due to other factors, especially smoking despite evidence presented to them, as early as 1974 by Dr. Margaret Becklake, that both restrictive and obstructive profiles should be accepted as associated with asbestos exposure, and that Dr. Becklake did "not support the view that obstruction when present is attributable to other factors, e.g. cigarettes." (12)

Other health problems that would not normally interfere with a person's ability to carry out his or her job may combine with asbestosis to make that person completely disabled and yet the Board would assign an arbitrary that makes it impossible for a victim to retire with any sense of dignity.

There has been much discussion about the efficacy of medical removal programmes to slow down the rate of progression of asbestosis. The Board maintains control over their decisions about who should be removed. Older workers with some degree of asbestosis are left in the asbestos exposures since retraining and placement are difficult. Workers and their personal physicians are ignored in the Board's rehabilitation programme decisions. Employers are not being forced to find alternative non-exposure work for the victims that they have made ill.



Workers who are essentailly totally disabled because of asbestosis whether alone or incombination with other health problems and who are unable to be moved to another job because of age, education or work skills are being left in the plant to sit around all day. Fellow workers often carry their work load to protect them from firing, but this causes strains and tensions in the workforce.

What is needed is a system that explores all of the factors that impact on a person's disability and recognizes the essential contribution that asbestosis makes to that disablement.

RECOMMENDATION 9.

WHERE ASBESTOSIS CONTRIBUTES TO A PERSON'S INABILITY TO
PERFORM HIS OR HER JOB FULL BENEFITS MUST BE GIVEN UNTIL
THE PERSON CAN BE PLACED IN A JOB THAT HE OR SHE IS ABLE
TO PERFORM BOTH PHYSICALLY AND PHYCHOLOGICALLY. IF SUCH A
JOB IS AT A LOWER RATE OF PAY THE DIFFERENTIAL MUST BE
MADE UP. IF A PERSON CANNOT BE RETRAINED OR PLACED HE OR
SHE SHALL CONTINUE ON FULL BENEFITS.

RECOMMENDATION 10.

THE WCB MUST EXPAND ITS REHABILITATION PROGRAMME TO REMOVE
ASBESTOSIS VICTIMS AND THOSE WITH PRE-ASBESTOTIC SIGNS.
FULL BENEFITS MUST BE PROVIDED TO THE WORKER DURING
RETRAINING AND PLACEMENT IN ALTERNATIVE EMPLOYMENT THAT
IS SUITED BOTH PHYSICALLY AND PHSYCHOLOGICALLY FOR THE
WORKER. ANY DIFFERENTIAL IN WAGES MUST BE MADE UP.
IF A WORKER IS UNABLE TO BE RETRAINED AND PLACED, HE OR
SHE SHOULD BE ABLE TO CHOOSE WHETHER TO STAY IN THE
PRESENT JOB OR RETIRE WITH FULL BENEFITS.



Recognition must be given to the diseases that arise in family contacts.

Asbestos workers often carried home the hazard on their workclothes

because proper hygiene facilities were not required or not provided.

Even John McKinney, the Chairman of the Board of Directors of Johns
Manville recognized the impact that asbestos has on worker, family and

bystander alike when he testified before the House of Representatives'

Subcommittee on Labour Standards in 1979 where he stated:

"We think that in view of the circumstances, the whole medical history and everything, that anyone who has an asbestos related disease should be compensated, whether worker or not." (13)

It is reasonable to assume that family contacts were exposed to asbestos in the past and therefore the household exposure would contribute to the development of the described disease. Community exposure has also been shown in a number of studies and recognition must be given to the victims of such corporate pollution.

RECOMMENDATION 11.

WHERE A FAMILY CONTACT DEVELOPS AN ASBESTOS-RELATED DISEASE
THAT IS RELATED IN THE SCHEDULE TO THE INDUSTRY OR OCCUPATION
OF THE WORKING SPOUSE OR PARENT, COMPENSATION SHOULD BE AWARDED.



NEW DISEASES RELATED TO ASBESTOS

The development of an occupational disease schedule is recommended in order to make the compensation of recognized diseases automatic, under no circumstances should it be used to disallow claims for other diseases that are not as yet on the schedule. Each new study is showing a number of new cancers that are statistically significant. For example, Selikoff found a statistically significant increase in kidney cancer among his insulation workers and Wagoner and Lemen found increases in lymphomas To date there have been no claims to the Board on these diseases, but a rational system must be developed to include such new diseases when the literature indicates an association or when the victims start appearing.

What happened in the past to establish gastro-intestinal cancer and laryngeal cancer as related diseases can only be described as an all out public battle between the Compensation Board and the Ministry of Labour and the victims or their survivors aligned with labour, the NDP and the press. It was certainly not the rational, thoughtful research and consulation approach described in the WCB brief.

When one looks back over the legislative debates, the press coverage and the Ombudsman T.V. programme during 1976, 1977 and 1978 when the pressure was being asserted by the Steelworkers and the NDP to get the Board to recognize laryngeal cancer, you see even the former Minister of Labour, Dr. Bette Stephenson engage in a personal attack



on a medical researcher at U of T, but even more appalling was her vicious public attack on the victim himself, Aime Bertrand for causing his own misfortune by drinking and smoking too much.

Widows of stomach cancer victims at Raybestos-Manhattan and Johns-Manville laid bare their financial, emotional and physical pain for all Ontario to see in order to gain justice and recognition. The Board itself, participated in attacks on the victims and their representatives in the media, something that was conveniently ommitted from their brief.

This is surely not "Justice, Humanely and Speedily Rendered." What the WCB must do is take an active role in identifying work-related disease rather than the passive-reactive stance taken to date. The Board should be scouring the world literature, consulting with major research institutions and carrying out their own research projects in hazardous industries.

Instead, they await a claim for a specific disease to start their enquiry system. They claim to do what we describe and yet their has yet to be a recognized disease announced without a claim that has waited for resolution for months or years. If they are reviewing the literature, why do we not see reference to an investigation of the connection between kidney cancer or lymphomas and asbestos in their brief?

The Board should be investigating potential synergistic effects of chemicals in the workplace instead of in the lifestyle. They treat



the workplace as if it were a laboratory where workers are exposed in carefully calculated doses to an individual agent, which bears no relationship to the industrial reality.

There should be a process by which the Board automatically recognizes diseases where the scientific literature points to a connection.

As well they should develop a public process by which victims or their representatives, or anyone who discovers an association between work and ill-health can trigger an immediate review and consideration by the Board for inclusion in the schedule.

Workers must be encouraged to submit claims for work-related diseases and the benefit of the doubt must work to presume that they are work-related unless it can be proven to the contrary. The Board must stop their practice of automatic rejection of new disease claims and reverse the onus to have employers prove that they are not related to the workplace.

Workers are not told of the hazards in their workplace, the names or ingredients of the chemicals with which they work and yet the Board has forced the onus on to them to prove the causal connection. The same philosophy of suspician that we wish the regulatory agency to have towards workplace chemicals must be shared by the Compensation Board and the chemicals should be presumed to be guilty unless proven innocent instead of the worker.



RECOMMENDATION 11.

THE WCB MUST ENGAGE IN AN ACTIVE, AGGRESSIVE SYSTEM OF LITERATURE REVIEW, CONSULTATION AND RESEARCH TO FIND NEW LINKS BETWEEN THE WORKPLACE AND DISEASE. AS WELL A PROCESS BY WHICH THE PUBLIC CAN INITIATE RESEARCH TO SCHEDULE WORKPLACE DISEASES MUST BE DEVELOPED.

RECOMMENDATION 12.

THE WCB MUST BRING THE BENEFIT OF THE DOUBT TO BEAR ON ALL CLAIMS FOR NEW DISEASES AS YET UNRECOGNIZED AND REVERSE THE ONUS ONTO THE EMPLOYER TO PROVE THAT THE WORKPLACE DID NOT CONTRIBUTE TO THE DISEASE.

INFORMATION TO WORKERS

One of the major reasons for the underreporting of occupational disease to the WCB lies in the problem of worker awareness not only of the relationship of illness to their work but also to their right to compensation for the disease.

Until the Occupational Health and Safety Act, 1978 workers had no real legal access to information about the chemicals in their workplace.

The Act provides information in a limited way by requiring that the employer aquaint the worker with the hazards connected with his job and we have seen some of the distortion that is presented to workers as information about hazards in the Quebec Asbestos Mining Association's brochure on the health effects of asbestos.



Employers understand that one way to limit their compensation costs is to limit access to information for workers. The litigation trials in the U.S. against the major asbestos corporations have shown that it was often a deliberate corporate policy to deny, suppress and manipulate information. They were even found to have denied medical information to victims of lung disease.

Even with asbestos, perhaps the best known workplace hazard, there is still an appalling lack of information among workers. In Dr. Selikoff's cohort of insulation workers where one would think that knowledge about the hazard would be high, there were almost a quarter of the widows who were unaware of the connection between asbestos and the cause of their husband's death. (14)

Since much of the disease we will see in the next few decades will result from exposures in the past, workers do not always remember where they worked or if they worked with asbestos. Employers have no interest in telling them about the potential hazards of their past exposures, so that there is little reason to believe that the underreporting of disease claims for asbestos exposure will not continue into the future, unless an active campaign to disclose information to workers is launched.



The lack of information about a worker's right to compensation for occupational diseases merely adds to the problem of underreporting.

Again in the study of insulation workers and their survivors, only 29% of the workers suffering from asbestos-related disease actually applied for compensation, the figure was 27% among the insulation workers across Canada. Less than half of the survivors applied for death benefits.

When the widows were asked why a workmen's compensation claim had not been filed, 71% indicated that they had no knowledge that they were entitled to do so, an additional 3% said that they were misinformed and 4% said that they were misadvised. This means that 78% of the widows lacked adequate information about their entitlement to compensation. (15)

The fact that illness, disability or premature death often occurs after retirement means that many workers or their spouse do not seek a remedy in compensation and of course, the White Paper would ensure that even if they did they would receive nothing.

Again the WCB plays a rather passive role in attempting to identify victims and getting them to apply for compensation. Their brief describes how they approached the employers for information about potential claims. Do they really believe that employers will take an active role in tracing past employees that may lead to claims and increased assessments out of the goodness of their hearts. Unions have also been asked to seek out potential claims from among their members and we are certainly willing to take as active a role as possible. The problem is one of resources and how to search out retirees and former



members, not to mention the fact that they are unable to reach all of the non-union workers who are exposed. What is needed is an agressive notification and advertising campaign.

RECOMMENDATION 13.

ALL EMPLOYERS MUST BE REQUIRED BY LAW TO INFORM ALL PRESENT AND PAST EMPLOYEES IN WRITING OF THE CHEMICAL BIOLOGICAL AND PHYSICAL AGENTS THAT WERE PRESENT IN THE WORKPLACE DURING THEIR EMPLOYMENT AND THE POTENTIAL HEALTH EFFECTS OF EXPOSURE TO THOSE AGENTS.

RECOMMENDATION 14.

EMPLOYERS MUST ALSO SEND INFORMATION PREPARED BY THE WCB
WHICH LISTS THE SCHEDULE DISEASES AND THEIR CAUSE, PRECEEDURES
FOR PURSUING A CLAIM, AND ENCOURAGEMENT AND ADVISE ON HOW TO
SUBMIT A CLAIM FOR A DISEASE THAT IS NOT YET ON THE SCHEDULE
TO ALL PRESENT AND FORMER EMPLOYEES.

RECOMMENDATION 15.

THE ONTARIO WORKMEN'S COMPENSATION BOARD MUST EMBARK UPON A MAJOR, POSITIVE ADVERTISING CAMPAIGN TO INFORM WORKERS, RETIREES, WIDOWS AND WIDOWERS AS WELL AS THE GENERAL PUBLIC ABOUT OCCUPATIONALLY-RELATED DISEASES AND THE RIGHT TO COMPENSATION.

INFORMING PHYSICIANS ABOUT OCCUPATIONAL DISEASE

Physicians play a major role in the underreporting of occupational disease to the WCB as well. Few physicians have had any training in the field of occupational medicine and even fewer have had work-



place experience that might make them more aware or sensitive to the hazards of work. There is no emphasis on taking a complete occupational history and the only public health input into their education seems to focus on lifestyle problems. The physician, therefore does not take anactive role in promoting the patient or his survivors to file a claim for an occupational disease.

Even when a physician does take an active interest in a disease claim and becomes informed, the Board dismisses their expertise. In 1976, the Board took the unprecendented move in writing to every physician in the province to inform them about occupational disease. The physicians were encouraged to take occupational histories and contact the Board where there is suspician of a connection between the disease and work. While the emphasis on lifestyle in the letter, indicated once again their preoccupation with blaming the victims, the Board should be congratulated on this preliminary step. Unfortunately, all letters to physicians since then have dealt with claims reporting and the services of the Board. It is surely a duty of the WCB to undertake a major educational programme with the physicians in this province to inform them of occupational diseases.

RECOMMENDATION 16.

THE WCB SHOULD APPROACH THE MEDICAL SCHOOLS IN THE PROVINCE TO INCLUDE OCCUPATIONAL MEDICINE AND WORKMEN'S COMPENSATION INFORMATION IN THEIR CURRICULUM.



RECOMMENDATION 17.

THE WCB SHOULD SEND A REGULAR NEWSLETTER TO ALL PHYSICIANS IN THE PROVINCE INFORMING THEM OF ANY NEW DISEASES THAT ARE RECOGNIZED, NEW RESEARCH FINDINGS INDICATING CONNECTIONS BETWEEN DISEASE AND THE WORKPLACE AND REFERENCES FOR FURTHER READING. AS WELL THE WCB SHOULD SEND COPIES OF THEIR BOOKLET OCCUPATIONAL DISEASES TO EVERY PHYSICIAN FOR HIS OR HER INFORMATION AND TO INFORM PATIENTS.

There is a continuing tension between workers and industry-hired physicians. Often the plant physician have played an adversary role in worker's compensation claims for injuries and diseases. The Designated Substance regulations will give these employer-hired physicians even more importance in the medical monitoring programme required and allow them to gather personal information that can then be used against the employee seeking compensation.

Quebec has recognized this conflict of interest during the Beaudry

Commission and has provided for the establishment of independant

occupational health clinics funded by the employers with selection veto

power given to the health and safety committees. Occupational Health

clinics would enable expertise to be gathered among the physicians in

identifying workplace problems and the fact that the workers from a

plant would all be seen at one clinic would allow the physicians to

identify any trends in illness or disease arising out of the industry

or different departments in the industry, something an individual family

physician may not see unless he or she works ina small community.



RECOMMENDATION 18.

TEE OCCUPATIONAL HEALTH AND SAFETY ACT, 1978 OR THE WORKMEN'S

COMPENSATION ACT SHOULD BE AMENDED REQUIRING INDEPENDANT OCCUPATIONAL HEALTH CLINICS TO BE SET UP AT THE EMPLOYERS EXPENSE.

ALL MEDICAL MONITORING SHOULD BE CARRIED OUT IN SUCH CLINICS

AND ONLY WITH THE EMPLOYEES' AGREEMENT. THE HEALTH AND SAFETY

COMMITTEES OF THE PARTICIPATING EMPLOYERS SHALL HAVE VETO POWER

OVER THE SELECTION OF THE PHYSICIANS AND STAFF AND NO INFORMATION

SHALL BE TRANSFERRED FROM THE CLINIC TO THE EMPLOYER UNLESS THE

WORKER AUTHORIZES IT IN WRITING. ALL PERSONAL MEDICAL RECORDS

ARE TO BE MADE AVAILABLE TO THE WORKER ON REQUEST.

One of the problems identified in testimony at the Commission this summer was the misdiagnosis of cause of death on the death certificates. Unless one looks at all the medical information leading up to death a victim could be described as dying from a completely unrelated cause and neither the physician or the survivors may then submit a claim.

An autopsy can be very helpful in establishing the presence of occupational diseases and workers and their families should be encouraged to seek an autopsy where any doubt as to actual cause of death exists.

And finally physicians must realize that they have to provide workers with their medical records in order to facilitate claims. Mr. Justice Krever recommended that patients should have access to any health information that is kept by any health-care provider and and that any any medical report that is sent to the WCB should be copied and sent to the claimant.



RECOMMENDATION 18.

ALL MEDICAL AND OTHER INFORMATION CONTAINED IN FILES AT THE WCB SHOULD BE MADE AVAILABLE TO THE CLAIMANT OR HIS OR HER AUTHORIZED REPRESENTATIVE UPON REQUEST. ANY MEDICAL REPORT THAT IS SENT TO THE WCB MUST BE COPIED AND SENT TO THE CLAIMANT INVOLVED.

A REGISTRY OF PERSONS AT RISK

It would be very helpful for tracing potential claims if there was a registry of names and addresses of persons who were and are exposed to asbestos on their job. While medical monitoring at present appears to have little positive impact on the tragic outcome of asbestos-related lung cancer and mesothelioma, a registry would provide the Board with the ability to inform all persons at risk of any new breakthroughs in diagnosis, treatment or scheduled diseases. As well a link with vital statistics information on deaths would allow the Board to immediately investigate a potential claim.

RECOMMENDATION 19.

THAT A REGISTRY OF ALL WORKERS WHO HAVE BEEN EXPOSED TO ASBESTOS BE ESTABLISHED.

PREVENTION OF ASBESTOS DISEASE

One of the functions of the WCB, in addition to its wage replacement role, is to provide incentives for employers to ensure a safe and

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workplace in order to avoid higher assessments. Both Paul Weiler and the White Paper have proposed a system of experience rating. Such a system has little incentive in it for the prevention of occupational diseases. The present method of limiting the number of diseases recognized and then limiting eligibility for those that are, means that employers are not, in fact paying for the disease that they have caused. perhaps, if our recommendations were accepted they would pay more.

However, of more importance, is the problem of latency in a system of incentives. When diseases do not appear until twenty or thirty years later, even if they are recognized and the employers are given a surcharge, it is too late to affect the development of disease for the next two decades or so. The only effective method to prevent occupational disease is a hazard rating which fine employers on a daily basis for every day that they exceed the accepted exposure level. This of course presumes that there is a "safe" threshold for exposure to asbestos, which we in the labour movement categorically reject. The only way to prevent future asbestos disease is to eliminate asbestos from our environment, and properly protect those construction and demolition workers who do this.

CONCLUSION

Paul Weiler has suggested that the real problem with the Compensation Board lies in the legislation and that amending the legislation will

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somehow relieve all of the concerns expressed in his first phase.

We agree that significant changes in the Act are required to relieve the present situation, especially in the compensation of occupational disease claims. But the real problem is one of focus and attitude. Unless the WCB can turn the focus onto the work-place and the work and away from the individual worker; and until the WCB can start to understand that very central role played by work in the determining of ill-health and stop blaming the victims no legislative changes will provide for "Justice, Humanely and Speedily Rendered."



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Statement to the

ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY ARISING FROM THE USE OF ASBESTOS IN ONTARIO

Submitted by the

United Electrical, Radio and Machine Workers of America
10 Codeco Court
Don Mills, Ontario, M3A 1A2

September, 1981



We are submitting a statement rather than a brief because our position is quite simple and straight-forward. It is long past due that asbestos be officially recognized as the health hazard it is. Not only should some asbestos-related diseases be recognized under Schedule 3(8) "The pneumoconioses other than silicosis", but Schedule 3 should be expanded to recognize all the cancers that have been linked to asbestos exposure. Further, as we indicated in our brief of January 16, 1981, workers in a variety of jobs in the electrical/electronics industry should be listed among those exposed to asbestos so that their claims for compensation can be immediately processed and granted.

We concur with the Ontario Federation of Labour brief that the expansion of Schedule 3 should not be used to discourage claims for non-Schedule 3 diseases nor should the rules of presumption be relaxed for such diseases. The intention of the Workmen's Compensation Act is clearly indicated in Section 3(2) which continues the philosophy articulated by Sir William Meredith in his final report to the Legislature in 1915 regarding workmen's compensation:

"I propose to block any difficulty of that kind by making it that in both cases (i.e., where any injury is claimed to arise in the course of employment or out of employment) the presumption is to be in favour of the workman until the contrary is shown; the burden will be on the employer."

While that philosophy is preserved for Schedule 3 diseases in Section 118 (8), claimants for other diseases have had the burden of proof shifted onto them. This must be stopped.

In addition restrictive clauses, such as those stipulating the required years of "continuous and repetitive exposure", have been used to undermine workers' rights to compensation for non-Schedule 3 diseases. This is clearly seen in the case of lung cancer of asbestos workers where restrictive clauses have been imposed despite clear scientific evidence that any asbestos exposure increases the possibility of lung cancer, and



no safe level of asbestos exists. In this case like so many others, restrictive clauses are merely a means to deny benefits which workers have as a right under the Workmen's Compensation Act.

Not only must restrictive clauses be removed from diseases which are added to Schedule 3, they must be removed from all non-Schedule 3 diseases as well. Unless the employer can prove otherwise, a disease must be assumed to be job-related as the Act presently indicates. The careful study by the British Royal Commission on Civil Liability and Compensation for Personal Injury also calls for the removal of restrictive clauses.

The rights of injured and diseased workers are under attack in another way which requires comment. As a means of relieving the Board of its obligation to compensate for job-related disease (and themselves of the expense involved), employers have been urging reduction or denial of compensation for industrial diseases which could also have been caused by the workers' lifestyles, by general environmental pollution and/or by hypersensitivity of individual workers. Acceptance of any of these arguments denies the whole basis of workers' compensation as it has been legislated from the beginning.

The vast majority of the population are forced to work for wages or salaries as a means of survival. Where in the course of that work (whether it is for the profit of a private employer or the good of the community in the case of non-profit and public employers) they are subjected to substances or work processes that cause disease, they should be fully compensated for any loss in earning capacity. Other possible contributory factors are irrelevant. Unless the employer can prove that work did not contribute to the disease, the Board has an obligation to grant full compensation. The issue of presumption is clearly set out in the Act and must be enforced. It is bad enough that the administrative practice of the Board has undercut the presumption provisions of the Act for so many years; it is intolerable to imagine that this will be made worse by introduction of lifestyle provisions in the future.



Finally, we feel that the Commission must address another aspect of asbestos-related diseases--compensation for non-employees who are exposed to asbestos either because of their proximity to the work site or to their contact with workers who become transmitters of the dust when it adheres to their clothes. The Board has an obligation to provide compensation to these persons as well, rather than forcing them to seek redress through tort liability. We feel it is time that the Act recognize the obligation of the Board to grant compensation for all "production-related" injuries and diseases. The issue is not just protecting employees but everyone who is subjected to dangerous substances emanating from the production process.

The dangers to non-employees of asbestos used in production have been clearly documented. The commission can make a significant contribution by addressing this issue and recommending the inclusion of these non-employed victims of the production process within the protection of the Workmen's Compensation Act.





Johns-Manville Canada Inc.



Products Division

295 The West Mall Etobicoke, Ontario M9C 4Z7 (416) 626-5200 Telex: 06-984559

October 13, 1981

Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, 180 Dundas Street West, 22nd Floor, Toronto, Ontario M5G 1Z8

Dear Sirs:

Please find enclosed eight copies of a brief from Johns-Manville Canada Inc. relating to your official assignment and dealing specifically with matters affecting worker's compensation. This brief is directed particularly towards the proposed revisions contained in the White Paper on the Workers' Compensation Act published by the Ontario Ministry of Labour recently.

In general, based on our company's experience in a wide variety of jurisdictions, it is our opinion that the Ontario Workmen's Compensation plan is one of the most effective systems that has been developed in its field. The proposed changes, in general, should improve the administration of the act and make it more satisfactory for all concerned.

If you would like to have clarification or expansion on any of the points raised in this brief do not hesitate to let us know.

Yours truly

T. S. Patterson

Director, Corporate Relations



Submission to the

Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario

on the subject of

Workers' Compensation

Johns-Manville Canada Inc. 295 The West Mall, Etobicoke, Ontario.



The Ontario Workers' Compensation Program and Asbestos Related Disease

Traditionally Ontario has been a leader in the development of Occupational Accident Programs. In January of 1973, a study of the Ontario Workmen's Compensation Board was undertaken by a task force appointed by the Minister of Labour, and published a report of their findings and recommendations in August of 1973. That study recognized that the system for delivery of benefits was in need of modernization. January 1980, the Minister of Labour requested that Professor Paul Weiler undertake a comprehensive review of the existing Act and its administration. A report was issued by Professor Weiler in November 1980, which recommended further major revision to the benefit structure and delivery system. Contained therein were 21 substantive revisions which the Government believes may be appropriate. Comments will be submitted below concerning each one of the 21 recommendations, along with a description of how compensable occupational diseases are covered under the current law.

Currently, all industrial diseases, including asbestos related diseases which are due to the nature of the employment in which the employee was engaged, are covered under the Act with current benefit levels, unless: (a) the employee, at the time of entering into the employment, falsely represented himself in writing as not having previously suffered from the disease, in which circumstance coverage would not occur, and (b) the employee was awarded compensation for an industrial disease prior to January 1, 1974, in which circumstance the employee will not be able to claim additional compensation for any period prior to that date. Current notice provisions provide for six months notification of accident or six months from the date of death. The notice provisions are relaxed if no prejudice can be shown by the employer for late notification. When an employee believes that he has contracted a compensable industrial disease, notification thereof is filed with the Board, which then refers the matter to a Medical Advisory Committee. The committee obtains data (i.e. exposure information, medical, etc.) from the employer, may examine the employee through panel physicians for the nature and extent of disability, and issues an evaluation. Assuming that there was exposure and that a disease exists, the committee would award a Workers' Compensation amount.



The employer, as well as the employee is notified of the action, and if either disagree concerning compensability of the claim as stated by the committee, they may appeal to the Board. That appeal is the remedy. Both workers and employers warrant a prompt and thorough review of a workers' compensation appeal and a response to the appeal within a reasonable period of time. We therefore support the changes recommended in the White Paper on the Workers' Compensation Act which set specific time tables for the appeal process.

Below are specific comments concerning the major proposals stated in the White Paper on the Workers' Compensation Act:

- 1. The Ceiling for the calculation of covered earnings (currently \$18,500) should be increased to 250% of the average industrial wage in Ontario: Currently formula benefits are 75% of gross earnings. The maximum anyone would receive for temporary total disability is \$13,875, or 75% of \$18,500. This is discriminatory against those employees earning in excess of \$18,000 and proportionally awards more to the lower earning employee. Costs to the Fund will be significant, however, we do not oppose this point.
- 2. Temporary compensation benefits should be based on 90% of pre-injury net disposable earnings instead of the present base of 75% of gross earnings:

 This proposal is similar to the 90% of net earnings currently utilized in the Province of Quebec. The white paper published by the Government of Ontario amply supports the position of why this formula should be changed.
- A dual award system should be instituted for permanent disability. A lump sum to be paid according to the degree of impairment, and continuing periodic payments to be made only when wages are actually lost:

 Currently, permanent disability is based upon the degree of impairment according to a fixed permanent disability rating schedule. Actual earning loss is not taken into account. The proposal would allow for a lump sum to individuals who lose a limb or suffers some other serious physical impairment and would vary according to the age of the worker at the time of injury. Additional wage loss would be the only extra compensation over and above the lump sum. This provision would provide an incentive to improve rehabilitation and re-employment programs and place the burden upon the employee to



- 3 -

cooperate in rehabilitation and re-employment programs. The examples of the effect of this proposal are well stated in the White Paper.

- 4. "Stacking" of benefits should be reduced by deducting C.P.P. disability and survivor benefits from W.C.B. benefits in cases of permanent disability and survivor awards: The Canada Pension Plan, in addition to Workers' Compensation, provides an incomemaintenance system available to disabled workers. A permanently disabled worker in Ontario receives benefits from two separate sources, which are not integrated. The proposal to have the Workers' Compensation payment reduced by the amounts received by the employee from other benefit sources is an excellent and progressive measure. We strongly support this proposed change.
- 5. Wage loss benefits for permanent disability should cease when the worker attains the age of 65, to be replaced with retirement income loss benefits: Under the current Act, permanent disability awards continue throughout the life of the worker. Those workers usually receive public or private pension plan benefits at the age of 65. The question raised is why should one continue to receive wage loss benefits after 65 when he would have received only retirement at that time anyway? We support this proposal.
- 6. The employer should maintain the worker's employment benefits (including private pensions) while the worker is on total disability benefits, for a maximum of one year: This proposal is similar to a previous discussion Johns-Manville Canada Inc. had with the Ontario Minister of Labour in July of 1979. We agree with this proposal.
- 7. In new fatal accident cases, survivor and dependent awards should be decided according to a new formula: Currently, survivorship benefits are not related to the income of the deceased worker. The pension is set at \$410 per month with an additional \$112 per month for each dependent child. One of the most obvious shortcomings of the current Ontario system is a discrimination of benefits against the survivor of a deceased worker. The proposal represents an equitable revision to the Act. It follows a wage loss concept.



- 8. Compensation benefit awards under the new Act should be reviewed annually by Cabinet for possible adjustments for inflation: Currently an increase of rates, to comply with inflationary demands, require special legislation. The proposal would allow for an administrative adjustment thereof in place of the legislative one. The proposal does not dictate automatic adjustments on the basis of a single index and allows regular input concerning the recommended changes.
- 9. The one-day waiting period for benefits should be eliminated and the employer should be required to pay the injured employee his normal wages for the day on which the injury occured: The current one-day rule provides for substantial administrative costs for the board to pay the large number of first-day claims. This recommendation would place that responsibility upon employers. J-M Canada Inc. does already follow this practice.
- 10. Coverage should be extended to domestics: Does not effect J-M Canada Inc. or other manufacturing employers.
- 11. An independent, tripartite appeals tribunal should be established: As stated in the White Paper approximately 700 cases a year are pursued beyond the Board to the Ombudsman. Alternative approaches to deal with the appeals are: (a) to have the Board as the final forum; (b) to leave the system currently with the Ombudsman and the Select Committee of the Leglislature as the final step; (c) to allow for appeal to the courts; and (d) to employ the proposal of the appeals tribunal. The tribunal would include full and part-time members recruited from the ranks of business and labour. Recourse to the courts is a slow and expensive ordeal. The only danger in utilizing an appeal tribunal would be to allow for the first step towards making Ontario's system an adversary one. This must be avoided. It appears that the tribunal would be a workable solution, provided proper safequards are employed.
- 12. A new system of independent medical review panels should be established: The positions taken in the White Paper are well stated.



- 13. A new corporate Board with outside directors should be established: The proposed Board containing outside directors would include persons selected from the ranks of labour, management, medicine, rehabilitation, occupational health and safety, and others. Though the concept is admirable in allowing policy to be dictated by those from outside as well as inside of the Workers' Compensation Administration, necessary safeguards would have to be included, which are absent at present, to insure that the make-up of the directors was not overly weighted towards one direction (i.e. all management and no labour, all labour no management, etc.) Again, the major danger in utilizing an appeal tribunal would be to create an adversary system.
- 14. The Office of the Worker/Advisor should be expanded and made independent of the Board: Currently the Board employs three worker/advisors to assist workers with their claims and represent the worker if an appeal hearing is necessary. By providing this service, little employment of legal council or trade union representatives occur. We support this proposal, as it would continue to avoid costly employment of attorneys.
- 15. A new Office of the Employer/Advisor should be established to be independent of the Board: Currently there are no employer/advisors. There is a need for assistance at the appellate level for employers. The proposal indicates that this service would be available to the small business man. It should also be available to large employers.
- 16. Full access to claim records should be made available to the employee and his representative; the employer and his representative should be granted access to those records deemed relevant by the board in cases where he contests either an application for compensation or his accountability for costs: We oppose the proposal as presently stated. The employer should be given equal access to claims records as the employee, in order for both to be equally protected. In fairness to all parties involved the employer must be able to obtain the same documents as the employee.



- 17. A mandatory experience-rating plan for individual employers should be instituted: This proposal would allow the Board to calculate the accident and compensation experience of the individual employer and would vary as an individual firms assessment according to this record, through a system of surcharges or refunds. We agree with Professor Weiler that the adoption of such a plan may generate further contention and litigation under the statute. The current "modest" experience-rating plan operating under the currect Act is workable. In addition to possible increased litigation, it would appear that adoption of the proposal would incur increased administrative costs.
- 18. A worker should accept available work deemed suitable by the Board, or lose equivalent compensation: The position taken in the White Paper is well stated. We support this proposal.
- 19. A worker should have the right to return to his old job, if he is able; and if he is no longer capable of performing that job, he should have a limited right to another suitable job in the same enterprise: Currently there is no statutory right to re-employment. The determination as to whether an employee is capable of returning to his old job, or a suitable job, depends on the extent of impairment and the physical and metal requirements of the jobs in the enterprise. We strongly oppose changes in this area. This should not be legislated but rather left to the parties (union/management) who best know the complexities and demands of the jobs in the workplace.

Should a decision be made to legislate a worker's post-injury right of return to his old job or a suitable job some changes must be made to relieve the employer of responsibility and liability for further injury that may occur to that worker or other workers because the rehabilitated worker was not capable of performing the job.

20. An employer should offer re-employment to an injured worker if suitable work is deemed to be available by the Board, or face increased assessment costs: See comments to Number 19, above.



21. Employment discrimination for seeking and/or receiving benefits under this act should be prohibited: Currently many states employ discrimination statutes as presented. We have had no difficulty with same and the intent of the proposal is admirable.

On the whole the Ontario system is a good one, not wrought with the deficiencies of formal litigation proceedings. The proposals presented in the White Paper are a realistic approach to making the system even better. Specific proposals such as the abolition of automatic compensation for permanent injury, regardless of actual loss of earnings, are to the advantage of all.

In looking at the proposals, however, one must recognize the fact that employers in the Province will have to pay approximately \$335 million to grant the increases contained in the proposals. In light of current economic conditions, it would appear to be more realistic to amortize the increases instead of establishing a flat effective date therefor.

Although the twenty one proposals contained in the White Paper do not address the subject of rehabilitation of injured workers, Division V, Section 36 of the draft bill to amend the Workmen's Compensation Act does contain suggestions in this area. With the phase out of the asbestos using operations at Johns-Manville Canada's Toronto plant the rehabilitation program for asbestos workers which was put into effect in 1976, has a somewhat reduced importance for this facility, but is by no means eliminated. For your information we have attached copies of correspondence to the Workmen's Compensation Board which contains our recommendations for this program. The rehabilitation program represents a useful concept that should be pursued by the Board that the Royal Commission review this program and issue as a part of its final report a statement supporting the continued development of an asbestos workers rehabilitation program in Ontario.





Johns-Manville Canada Inc.

Products Division

295 The West Mall Etobicoke, Ontario M9C 4Z7 (416) 626-5200 Telex: 06-984559

October 22,1979

bcc. H.B.Moreno, Denver 3-14

J.R.Wilson, Denver 1-05

J.R.Ariss

T.S.Patterson

H.J.Mollenkopf, Tor.Plant

J.Duncan, Tor.Plant

File

Mr. Michael Starr Chairman The Workmen's Compensation Board 2 Bloor Street East Toronto, Ontario M4W 3C3

Dear Mr. Starr,

On July 26,1979 representatives of Johns-Manville Canada Inc. met with you, the Honourable R.G.Elgie, M.D., Minister of Labour, Province of Ontario, and members of your respective staffs. At that time we indicated that we would inform you of our proposals to extend applicable company benefits to those Johns-Manville employees who may elect to participate in the Workmen's Compensation Board's Special Rehabilitation Program for Asbestos Workers. In order to accomplish this, we have had to perform necessary feasibility studies and plan the actual steps in order to place this into effect. The structure of administrative procedures, therefore, has caused a time lapse in us presenting our intentions.

The concept we envision would be to extend applicable employee benefits to those employees who elect to participate in the Special Rehabilitation Program for Asbestos Workers and pursuant thereto will have been former hourly and salaried employees employed at the Toronto plant. It is our intention to extend the following to all hourly and salaried employees of the Toronto plant who terminate their employment in order to participate in the rehabilitation program: (1) basic group life insurance; (2) Ontario health insurance plan; (3) Ontario Blue Cross (semi-private hospital room coverage); (4) major medical expense insurance; (5) prepaid prescription drug plan (salaried employees only); (6) Blue Cross drug plan (hourly employees only); and (8) Blue Cross dental plan (hourly employees only).

. 2



Pg.2 Oct.22,1979 Mr.Michael Starr

Eligibility for the specified benefit plan coverage of the above listed programs will continue until one of the following occur: (1) if the employee is successfully rehabilitated and ineligible to receive his/her full rehabilitation allowance from the Workmen's Compensation Board; (2) the employee reaches normal retirement age as specified in the company pension plan; (3) the death of the employee. We recommend that those eligible employees to be selected to participate in the program be ones with diagnosed asbestosis or asbestos-related disease regardless of their present work location in the plant or the level of dust to which they are exposed. We believe that operating under this criteria will present a meaningful and manageable set of circumstances for eligibility.

The above described outline of our proposal represents a unique opportunity for us to jointly participate in rehabilitation of those employees who are unfortunate to have suffered an occupational disease. Due to the present uncertainty concerning the success or results that the program may have, we reserve the right to modify, amend or terminate our participation after experience has been studied. We would, however, not modify, amend or terminate our participation as described for those employees to whom we have committed the benefits programs to.

In order that our Employee Relations personnel can be fully acquainted with the eligibility requirements and ramifications of your rehabilitative program, we request that you forward to us copies of those current brochures and regulations describing it.

On behalf of Johns-Manville Canada Inc., I would like to take this opportunity to thank you for your consideration. We ask that you inform us whether or not you concur in the above. If you desire further explanation and/or discussion concerning it, please do not hesitate to contact me personally.

Respectfully,

P.Loubert

President and General Manager





Johns-Manville Canada Inc.

Products Division

295 The West Mall Etobicoke, Ontario M9C 4Z7 (416) 626-5200 Telex: 06-984559

March 6,1980

Mr. J. Wisocky Director Vocational Rehabilitation Branch The Workmen's Compensation Board 2 Bloor Street East Toronto, Ontario M4W 3C3

bcc. H.B.Moreno J.R.D.Wilson J.R.Ariss T.S.Patterson File

Dear Mr. Wisocky,

Thank you for your letter of February 21 concerning the needs of the nineteen Toronto plant employees with rated pulmonary disability. We are pleased with your response, however, would like to offer the following comments.

We understand your plan to reassess individual needs and offer specific rehabilitation programs will include:

- (1) registered letter to each individual offering to review his current needs for rehabilitation services;
- (2) follow-up interviews between individuals and your doctor(s), rehabilitation counsellor(s) and claims representative(s) to reassess needs, outline programs and benefits available and initiate individual participation;
- (3) specific assignment for Mr. W.D. (Bill) Pearce to direct and coordinate this task team effort.

We agree that the terms of the collective bargaining agreement with local 26 Canadian Chemical Workers Union should govern programs of alternate employment with the company, provided such employment is within the bargaining unit. However, all of the nineteen employees involved have a great deal of seniority within the bargaining unit and probably have had ample opportunity to exercise their seniority under the terms of the collective bargaining agreement section 17.12 and other provisions to move to jobs which were in their medical best interests and other interests. Hence we have to feel that section 17.12 of the collective bargaining agreement does not provide the most appropriate solution to their problems.



Pg.2 Mar.6,1980 Mr.J.Wisocky

In view of the foregoing we would like to suggest that reference in your page No.1, paragraph 3, of your sample letter be amended to omit the last two sentences in their entirety. As you are aware, there are other problems involved in assisting these employees including their attitudinal and psychological difficulties relating to their continuing employment at our Toronto plant.

We agree that extension of the company-paid fringe benefit program will not be made to employees who have already left the company to participate in the "Special Rehabilitation Assistance Program". As you requested, this will confirm that the company will grant the following benefits to employees who participate in your rehabilitation service program:

- 1. Basic Group Life Insurance.
- 2. Ontario Health Insurance Plan.
- 3. Ontario Blue Cross (semi-private hospital room coverage).

4. Major Medical Expense Insurance.

5. Prepaid Prescription Drug Plan (salaried employees only).

6. Blue Cross Drug Plan (hourly employees only).7. Health Service Inc. Dental Plan (salaried employees only).

8. Blue Cross Dental Plan (hourly employees only).

Eligibility for the specified benefit plan coverage of the above listed programs will continue until one of the following occur: (1) if the employee is successfully rehabilitated and ineligible to receive his/her full rehabilitation allowance from the Workmen's Compensation Board; (2) the employee reaches normal retirement age as specified in the company pension plan; (3) the death of the employee.

As agreed, it is advisable to inform local 26 CCW Union of the Board's rehabilitation initiatives, including the companysponsored benefit package, prior to communicating with affected Union members by registered letter. In this regard we request that Mr. W.D.Pearce arrange a meeting with Mr. C.Neilson, President, Local 26 CCW, to outline above plans.

We would like to take this opportunity to thank you, the Workmen's Compensation Board and the Ministry of Labour for the positive response to our proposals and for your comment that the company is to be commended for maintaining its consistently low level of dust readings below your program standards.



Pg.3 Mar.6,1980 Mr.J.Wisocky

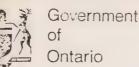
Our mutual commitment is to serve the rehabilitation needs of the Toronto plant workers with pulmonary disability. We will provide our full support as you implement your plans and services and look forward to a progress report within the next 6 to 8 weeks.

Respectfolly,

G.P.Loubert

President and General Manager





White paper

on the Workers'
Compensation Act







Ministry of Labour

400 University Avenue Toronto, Ontario M7A 1T7 (416) 965-4101

This White Paper sets out the Government's proposals for change in the Province's workers' compensation system.

In January, 1980, I requested Professor Paul Weiler to undertake a comprehensive review of the existing Workmen's Compensation Act and its administration. In November, 1980, he delivered to me a report entitled "Re-shaping Workers' Compensation for Ontario" in which major revisions to the benefit structure and adjudicative system were recommended.

Since 1913, the year of Mr. Justice Meredith's landmark report proposing a compulsory industry-financed system of collective responsibility for work-related injuries, Ontario has been in the forefront in this field. My goal in initiating a major review last year was to ensure that our system is adequate to the needs of the 1980s.

When I received Professor Weiler's report last
November, I caused it to be circulated widely to labour and
management groups and to other interested parties for
comments and suggestions. I have had a number of responses
and have had several meetings with interested parties to
discuss the proposals. As might be expected, there are some
differences of view on the substance of the proposals; in
the main, however, there is a broad consensus in favour of
the major thrust of the proposed revisions.

The Government is persuaded that reforms along the lines recommended in the Weiler Report are required. However, before introducing a Bill in the Legislature, it has been decided to circulate this White Paper setting out twenty-one substantive revisions which the Government believes may be appropriate and illustrating how these revisions would apply to the day-to-day administration of claims.

Translating the twenty-one proposals into workable legislative language is, of course, essential. Attached to the White Paper is the proposed Statute, giving effect to the twenty-one proposals and re-organizing the structure and modernizing the language of the existing Act, which has evolved in piecemeal fashion over many decades.



As readers will see, the proposed Bill, like its predecessor, is unavoidably long and complex. Moreover, many of the new proposals - entitlement related to wage loss, incorporation of an age factor in determining the amount of some awards, the protection of retirement income, to name only three - pose particular difficulties and have important ramifications for the proposed new system. Close collaboration among the administrators, actuaries and legal draftsmen is, therefore, essential to ensure that the intent of the recommendations is sound and is properly carried out.

A concern expressed by some relates to the costs of the new system. Included in the Paper are comparative cost estimates (together with a narrative explanation of the assumptions made and methodology used in arriving at these estimates) prepared by the Board's Actuary and verified by an independent actuarial consultant.

Finally, the Paper comments on the application of the proposed legislation to workers disabled and receiving benefits under the existing Statute.

I should mention that in the second phase of this inquiry, which is about to commence, Professor Weiler will be taking a longer-range view of the compensation problems associated with industrial disease, the advantages and disadvantages of moving to a universal plan for guaranteeing against loss of income from personal injuries whether work-related or not, existing administrative and functional relationships between the Board and the Ministry of Labour and other related matters. The immediate justification for the proposals contained in the draft Bill attached are not dependent upon further enquiry into those related matters.

The present intention of the Government is to proceed with enactment of the new legislation, along the lines set out in the draft Bill as soon as possible, unless I receive strongly-supported reasons for modifications.

I would request that written comments be received no later than August 31, 1981, in order to be considered prior to the introduction of any legislation. Comments should be addressed to:

> The Workers' Compensation Revision Committee, Ministry of Labour, 400 University Avenue, Toronto, Ontario. M7A 1T7

> > Robert G. Elgie, M.D.

Minister



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SUMMARY OF MAJOR PROPOSALS

- 1. THE CEILING FOR THE CALCULATION OF COVERED EARNINGS (CURRENTLY \$18,500) SHOULD BE INCREASED TO 250% OF THE AVERAGE INDUSTRIAL WAGE IN ONTARIO (APPROXIMATELY \$40,000 IN 1980).
- 2. TEMPORARY COMPENSATION BENEFITS SHOULD BE BASED ON 90% OF PRE-INJURY NET DISPOSABLE EARNINGS (INSTEAD OF THE PRESENT BASE OF 75% OF GROSS EARNINGS).
- 3. A DUAL AWARD SYSTEM SHOULD BE INSTITUTED FOR PERMANENT DISABILITY: A LUMP SUM TO BE PAID ACCORDING TO THE DEGREE OF IMPAIRMENT, AND CONTINUING PERIODIC PAYMENTS TO BE MADE ONLY WHEN WAGES ARE ACTUALLY LOST.
- 4. "STACKING" OF BENEFITS SHOULD BE REDUCED BY DEDUCTING C.P.P. DISABILITY AND SURVIVOR BENEFITS FROM W.C.B. BENEFITS IN CASES OF PERMANENT DISABILITY AND SURVIVOR AWARDS.
- 5. WAGE LOSS BENEFITS FOR PERMANENT DISABILITY SHOULD CEASE WHEN THE WORKER ATTAINS THE AGE OF 65, TO BE REPLACED WITH RETIREMENT INCOME LOSS BENEFITS.
- 6. THE EMPLOYER SHOULD MAINTAIN THE WORKER'S EMPLOYMENT BENEFITS (INCLUDING PRIVATE PENSIONS) WHILE THE WORKER IS ON TOTAL DISABILITY BENEFITS, FOR A MAXIMUM OF ONE YEAR.
- 7. IN NEW FATAL ACCIDENT CASES, SURVIVOR AND DEPENDENT AWARDS SHOULD BE DECIDED ACCORDING TO A NEW FORMULA: ANNUALLY ADJUSTED PENSIONS CALCULATED ON THE BASIS OF THE DECEASED'S PRE-ACCIDENT EARNINGS (RATHER THAN FLAT RATES, AS CURRENTLY), THE PERCENT OF SUCH AWARDS TO VARY WITH THE AGE OF THE SPOUSE; A CAPITAL SUM EQUAL TO 250% OF THE AVERAGE INDUSTRIAL WAGE (APPROXIMATELY \$40,000 IN 1980), ADJUSTED FOR SPOUSE'S AGE, AWARDED TO THE SPOUSE; SUCH CAPITAL SUM TO BE THE SOLE COMPENSATION OF SPOUSES UNDER 40 WITH NO DEPENDANTS.



- 8. COMPENSATION BENEFIT AWARDS UNDER THE NEW ACT SHOULD BE REVIEWED ANNUALLY BY CABINET FOR POSSIBLE ADJUSTMENTS FOR INFLATION, SUCH REVIEW TO FOLLOW A PUBLIC REPORT BY THE WORKERS' COMPENSATION BOARD AND ANY SUCH ADJUSTMENTS TO BE MADE BY REGULATION.
- 9. THE ONE-DAY WAITING PERIOD FOR BENEFITS SHOULD BE ELIMINATED, AND THE EMPLOYER SHOULD BE REQUIRED TO PAY THE INJURED EMPLOYEE HIS NORMAL WAGES FOR THE DAY ON WHICH HIS INJURY OCCURS.
- 10. W.C.B. COVERAGE SHOULD BE EXTENDED TO DOMESTICS.
- 11. AN INDEPENDENT, TRIPARTITE APPEALS TRIBUNAL SHOULD BE ESTABLISHED.
- 12. A NEW SYSTEM OF INDEPENDENT MEDICAL REVIEW PANELS SHOULD BE ESTABLISHED.
- 13. A NEW CORPORATE BOARD WITH OUTSIDE DIRECTORS SHOULD BE ESTABLISHED.
- 14. THE OFFICE OF THE WORKER ADVISER SHOULD BE EXPANDED AND MADE INDEPENDENT OF THE BOARD.
- 15. A NEW OFFICE OF THE EMPLOYER ADVISER SHOULD BE ESTABLISHED, TO BE INDEPENDENT OF THE BOARD.
- 16. FULL ACCESS TO CLAIM RECORDS SHOULD BE MADE AVAILABLE TO THE EMPLOYEE AND HIS REPRESENTATIVE; THE EMPLOYER AND HIS REPRESENTATIVE WILL BE GRANTED ACCESS TO THOSE RECORDS DEEMED RELEVANT BY THE BOARD IN CASES WHERE THE EMPLOYER CONTESTS EITHER AN APPLICATION FOR COMPENSATION OR HIS ACCOUNTABILITY FOR COSTS.
- 17. A MANDATORY EXPERIENCE-RATING PLAN FOR INDIVIDUAL EMPLOYERS SHOULD BE INSTITUTED.
- 18. A WORKER SHOULD ACCEPT AVAILABLE WORK DEEMED SUITABLE BY THE BOARD, OR LOSE EQUIVALENT COMPENSATION.



- 19. A WORKER SHOULD HAVE THE RIGHT TO RETURN TO HIS OLD JOB, IF HE IS ABLE; AND IF HE IS NO LONGER CAPABLE OF PERFORMING THAT JOB, HE SHOULD HAVE A LIMITED RIGHT TO ANOTHER SUITABLE JOB IN THE SAME ENTERPRISE.
- 20. AN EMPLOYER SHOULD OFFER RE-EMPLOYMENT TO AN INJURED WORKER IF SUITABLE WORK IS DEEMED TO BE AVAILABLE BY THE BOARD, OR FACE INCREASED ASSESSMENT COSTS.
- 21. EMPLOYMENT DISCRIMINATION FOR SEEKING AND/OR RECEIVING BENEFITS UNDER THIS ACT SHOULD BE PROHIBITED.



PRINCIPLES

Underlying the proposals for change in the workers compensation program are the following principles:

- 1. The structure of benefits in the Act should compensate for actual income loss, as closely as is reasonably possible, in recognition of the fact that the statute denies workers the right to sue their employers for damages from occupational injuries.
- 2. The effectiveness and acceptability of the Board's internal decision-making procedure should be enhanced by providing for external review and participation.
- Because compensation is at best a poor substitute for prevention, and only a temporary and partial alternative to re-employment, the Board's efforts in the areas of accident prevention and vocational rehabilitation should be expanded.



DIVISION V

MEDICAL AID AND REHABILITATION

- 34.-(1) Every worker who is entitled to compensation for loss of earnings under this Part or who is injured but does not suffer loss of earnings after the date of the injury shall,
 - (a) receive such medical aid as may be necessary as a result of the injury;
 - (b) make the initial choice of doctor or other qualified practitioner for the purposes of this section; and
 - (c) where, in the opinion of the Board, the worker is rendered helpless through permanent total impairment, receive such other treatment, services or attendance as may be necessary as a result of the injury.
 - (2) The Board may pay and, where the employer is individually liable, may order the employer to pay,
 - (a) for the replacement or repair of an artificial member or an apparatus of a worker that is damaged as a result of an injury in employment; and
 - (b) upon application to the Board, an allowance not exceeding an amount fixed by regulation for the replacement or repair of clothing worn or damaged by the wearing of a lower or upper limb prosthesis, leg brace or back brace where the same has been supplied by the Board.
 - (3) Medical aid shall be furnished or arranged for by the Board or as it may direct or approve and,
 - (a) for employers in the industries included in Schedule 1, shall be paid out of the compensation fund; and
 - (b) for employers in the industries included in Schedule 2, shall be paid by the employer of the injured worker to the Board.
 - (4) Where the Board is of the opinion that it is in the interests of the injured worker to provide a special surgical operation or special medical treatment for a worker, the expense of such operation or treatment may be paid out of the compensation fund or by the employer individually if so directed by the Board.



29.

- (5) All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished and as to payment for medical aid shall be determined by the Board.
 - (6) The fees or charges for medical aid shall not be more than would be properly and reasonably charged to the worker if he was paying those fees or charges, and the amount thereof shall be determined by the Board.
 - (7) No action for any amount greater than that determined by the Board under subsection 6 lies against the Board, an injured worker, the employer, or any other person.
 - (8) Where accounts for payment of medical aid are not received by the Board within such time as the Board may direct, the Board may impose a penalty by way of a percentage reduction in the amount of the account as it may direct.
- (9) No employer, directly or indirectly, shall collect or receive or retain from any worker any contribution toward the cost or expense of medical aid.
- (10) The Board may require employers or a class of employers to maintain such first-aid appliances and service as the Board may direct, and the Board may make such order respecting the expense thereof as may be considered just.
- (11) Every employer shall at his own expense furnish to any worker injured in his employment who is in need of it immediate conveyance and transportation to a hospital or a physician located within the area or within a reasonable distance of the place of injury, or to the worker's home, and any employer who fails to do so is liable to pay for such conveyance and transportation as may be procured by the worker or by anyone for him, or as may be provided by the Board.
- (12) Where, in conjunction with or apart from the medical aid to which a worker is entitled free of charge, further or other service or benefit is, or is proposed to be, given or arranged for, any question arising as to whether or to what extent any contribution from the worker is or would be prohibited by this Act shall be determined by the Board.
- (13) In addition to any payments for compensation provided by this Part, the Board may furnish or provide an injured worker with an allowance for his subsistence and travelling when, under its direction, the worker is undergoing treatment or examination at a place other than the place where he resides.
- 5. Every physician, surgeon, hospital official or other person ttending, consulted respecting, or having the care of, any orker shall furnish to the Board from time to time, without harge, such reports as may be required by the Board in respect f such worker.



- 36.-(1) The Board shall take such measures as it deems necessary and make such payments as it deems expedient to assist an injured worker,
 - (a) in returning to work;
 - (b) in lessening or removing any handicap resulting from the injury; and
 - (c) in returning to a normal family and social life.
 - (2) In exercising the functions required of it by subsection (1), and without limiting the generality of that subsection, the Board may
 - (a) organize and provide rehabilitation services;
 - (b) develop, support and promote the activities of professionals in the field of health establishments, and of any other organization dealing with rehabilitation, and co-operate with them;
 - (c) assess the services available for rehabilitation and their efficiency;
 - (d) cause research to be carried out on new rehabilitation methods;
 - (e) see to the effectiveness of the rehabilitation measures and bring about the appropriate corrections;
 - (f) distribute information on rehabilitation;
 - (g) facilitate the access of the worker to rehabilitation;
 - (h) ensure that a worker suffering from an injury has access to consultation services, particularly in the fields of vocational guidance, psychology, social service, and manpower, to favour his reintegration into the functions he held before the accident;
 - (i) ensure the granting of financial assistance for the injured workers where the Board deems it useful or necessary for his reintegration into work, during a period of training, education or apprenticeship or in other cases it determines by regulation;
 - (j) aid in the adaptation of the worker's residence to the needs of the worker where the permanence of the injury might otherwise prevent the worker from living in his own residence.





655 Kember Ave. Sarnia, Ontario N7S 2S9

June 21st, 1981

Madam/

I saw a notice in the local paper re Public Hearings on Asbestos in Ontario. I just lost my Husband on March 29th of this year. He contacted Asbestosis of the lungs from the plant he was employed at. He was unable to work for the past 4 years. I don't believe I will be able to attend any of the hearings but I would certainly appreciate any reports or information that you could send to me. Something must be done to make the public aware that asbestos is dangerous to the health and that future generations will be safe guarded against this painful lung disease.

Thank you.

Mrs. G.W. Herron



Injured Workers' Consultants

Suite 300, 717 Pape Avenue, Toronto, Ontario M4K 3S9 (416) 461-2411



Brief to the Royal Commission On Matters of Health and Safety Arising from the Use of ASBESTOS in Ontario

October , 1981



Introduction

Injured Workers' Consultants is a community legal clinic which assists those workers who are having problems with their claims before the Workmen's Compensation Board. We are funded by the Clinic Funding Committee of the Ontario Legal Aid Plan and presently have a staff of nine community legal workers. We have recently submitted a brief to Professor Paul Weiler's study of Ontario's Workers' Compensation system and a copy of that part of this brief dealing with industrial disease is appended.

As representatives of injured workers, the vast majority of our casework involves traumatic injury. For various reasons, we see very few workers suffering from industrial disease in general or asbestos-related disease in particular. While coverage for industrial disease has been a feature of the Ontario's Workers' Compensation system since its inception in 1914, it is only in recent years that the full impact of job-related disease has become apparent, mainly through the struggles of workers (and miners in particular), environmental groups and a few members of the scientific community who have managed to overcome the control that business interests have long exercised over health research. We, at IWC, anticipate a strong upward trend in this struggle and, consequently, an increased caseload involving asbestos-related, as well as other industrial diseases.

We are also of the opinion that the artificial seperation between Occupational Health and Safety and Workers' Compensation should be eliminated. They are clearly two sides of the same coin and many of the anomolies which pervade the area of industrial disease stem from an outdated seperation of powers. The terms of reference of your own injury, for example, include both areas, as well they should. The jurisdictions of British Columbia and Quebec among others have combined the authorities



for health and safety and compensation in one agency and, we understand, Professor Weiler will be considering similar proposals for Ontario in Phase II of his study of Workers' Compensation in Ontario

I Asbestos and the WCB

The Workmen's Compensation Board has the authority and obligation under Section 118 (1) of the <u>Act</u> to compensate for disability or death caused by an industrial disease.

In practical terms, the WCB seems to use three distinct criteria to determine whether a given disease is "due to the nature of any employment" in which a worker was engaged.

The first criterion is the legislative authority of Section 118 (8) and Regulation 834, Schedule III. This outlines a limited list of industrial diseases and work processes, and provides that the Board shall presume, unless the contrary is shown, that a particular disease arose "due to the nature of that employment". Schedule III was a feature of the original Act in 1914 and has changed very little since that time. Asbestos, and asbestos-related disease are not included in Section III, with the exception of number 8 of the Schedule, the vague term "pneumpconioses" which is alleged to cover asbestosis.

The second determination used by the Board, stems from their internal policy which until the last few years, was not made available to the public.

For decades, in fact, the Board's internal policy was a closely guarded secret and it was only the publication by IWC of a pirated version of Board policy which forced the Board to rush out their official policy manuals.

Under Section 118 of the Board's Administrative Directives are a variety of diseases and work processes which are much more restrictive than



those in Schedule III, as they generally require a minimum number of years of exposure to a substance and a minimum latency period for the disease before consideration for recognition will be given.

As mentioned, diseases in this category are determined by WCB policy, into which there is no public input whatsoever. The Board has the exclusive authority under Section 74 (2) of the Act to determine whether a given non-Schedule III disease is work-related or not, how disabling such a disease is and what criteria for length of exposure, intensity of exposure, length of latency, etc. will be used to adjudicate such claims.

The only statutory guideline is the definition of "industrial disease" in Section 1 (1) (L) which, in addition to Schedule 3 diseases, includes "any other disease peculiar to or characteristic of a particular industrial process, trade or occupation."

The third form of industrial disease would fall under the catch-all, "others". These would include all diseases not covered by Schedule III or Board policy. In these cases, the onus is clearly on the worker to establish both a clear-cut cause/effect relationship in his/her personal circumstances and general evidence that the process has been shown to produce similar results in others.

In dealing with asbestos-related disease, we are at present dealing mainly with the second category; diseases determined by WCB Policy. It is therefore important to consider who the policy makers are, in whose interests they are acting, how such policy is determined and how accessible are such policies and policy-makers to those that their decisions effect.



Who Are The Policy-Makers?

Clearly, in industrial disease, the role of the Board's medical staff is primary. The nominal body determining such matters is the Corporate Board which is made up of government appointees. In medical matters, however, the Board's medical staff who "advise" on such matters. This medical staff is headed by Dr. William McCracken, as Executive Director of Medical Services. In the area of asbestos-related claims, we would assume that some, or all of the following people would also be involved:

Dr. William McCracken

Dr. Charles Stewart

Dr. Douglas Dyer

Advisory Committee on Occupational

Chest Diseases.

Dr. McCracken, Executive Director, Medical Services Division, WCB

In the Globe and Mail of April 15, 1980 Dr. McCracken was quoted regarding exposure limits to asbestos fibres - as saying, "Anyone who says
two (fibres per cc) is too high, is guessing at something not based on
numbers. It's very easy for people passing regulations to say .5 is right.
They don't have to look at the economics." This Commission has heard
from far more qualified people than ourselves, that the two fibre limit
is too high. In fact we can add the government of Ontario to the growing
list of those "guessing at something not based on numbers" as it has
recently set the new standard for asbestos exposure at a maximum of 1 fibre.
Dr. McCracken's answer would seem to indicate that while the government
doesn't have to "look at the economics" in passing this regulation, he will
assume the role of a self-appointed defender of the economic health of
Ontario industry.



Needless to say, Dr. McCracken doesn't "look at the economics" of a worker suffering from mesothelioma, asbestosis, lung cancer, G-I cancer, laryngeal cancer. His concern with economics seems to be limited to the economic health of employers, not the physical, psychological or economic health of the worker.

Dr. McCracken, however is not totally intransigent on maintaining the 2 fibre limit. Later, in the same article, he says "Among workers, no one knows what the effect of the two-fibre level will be. We're going to have to wait 25 years to find out."

Taken as a whole, Dr. McCracken's attitude is typical of the approach used by the WCB in adjudicating industrial disease claims. While his concern for company profits might be more blatant in this example, it is clear to workers and their representatives that the role of the "Medical" personnel at the WCB has little to do with "objective" scientific fact.

Dr. Stewart, Chest Diseases Consultant, WCB.

The doctor responsible for many individual claims concerning asbestosrelated disease, Dr. Stewart, one would expect, has a solid background
in the field of epidemiology, respiratory disease, occupational disease
or a similar discipline. Dr. Stewart is in fact a G.P. His sole
qualification for his appointment would appear to be the fact that he ran
unsuccessfully for the Conservative Party in a provincial election.

Dr. Stewart, too, has strong views which fall outside his duties as a medical adviser. In an interview with a member of IWC, he indicated that he paid no attention to the presumptive effect of Schedule 3. His view was that you should always look for a cause and effect in adjudicating an industrial disease claim and that he ignored Schedule 3.



While this attitude might cause some concern, it is apparent that Dr. Stewart's role in adjudicating asbestos claims is limited to acting as a go-between with the Advisory Committee on Occupational Chest Diseases. While it is reassuring to know that Dr. Stewart's role is apparently minimal, it raises concerns over who's in charge and what the decision-making process actually is.

The Advisory Committee on Occupational Chest Diseases

Many, if not all, claimants for WCB benefits for chest diseases appear to have their claims adjudicated, not by the Board, but by the Advisory Committee. In sworn testimony, during an examination for discovery, Dr. Stewart indicated that it was the Advisory Committee that reviewed a silicosis claimant between 1972 and 1979 and that it was the Advisory Committee that determined the degree of physical impairment.

"Q: If I am correct, Dr. Stewart and you tell me if I am wrong, you would get reports from the Advisory Committee from time to time and would either change or not change your ratings, your disability rating based on those reports? The Deponent (Dr. Stewart): That is true.

Q: My understanding is there was no change over the years. And that would be because the Advisory Committee did not recommend any change. Is that correct?

A: That is correct."

In another case of asbestos-related disease, the Advisory Committee initially rejected a relationship between workplace exposure and the claimant's disability. Dr. Stewart followed suit. The Committee, however, submitted a revised report which indicated a 15% provisional pension and full benefits for surgery and recovery. Dr. Stewart also quickly changed his view.



While this claim was ultimately allowed, it raises considerable concerns regarding the decision making process in asbestos-related claims. If the Advisory Committee hadn't revised its opinion and the claimant had appealled, he would have been appealling to a body - the WCB - which seems to have abrogated its responsibilities in deciding his case. It was, essentially, the decision of the Advisory Committee which was being appealled.

In preparation for the appeal, one of our staff contacted the Advisory Committee, with a signed authorization from the claimant. He was told that the Committee has been asked by the Board, not to forward information to third parties. Despite the proclaimed "independence" of the Advisory Committee and the terms of REgulation 26(26) under the Health Disciplines Act, which requires a report from a physician upon request by a patient or his authorized agent, the Advisory Committee refused to comply. A complaint was filed concerning this matter with the College of Physicians and Surgeons. While that body has not made a ruling, correspondence from the Minister of Labour (attached) indicates his view that the Advisory Committee should be accountable under the Health Disciplines Act.

Conclusion

While the above may appear as an ad hominum attack on various individuals, it is in fact indicative of the "seige mentality" which permeates the Board in general and the Board's medical branch in particular. As the recent book <u>Assault on the Worker</u> by Reasons, Ross and Paterson puts it (pg. 165):

"The single most contentious area of disputes is with WCB-employed physicians whose decisions are all-important and whose reports are generally with-held from the very workers whose lives are most affected by them. This secrecy has much to do with the bureaucracy problem. Unfortunately, the

The second of th



organized medical profession does not generally support the right of the patient or worker to access to medical files. This legacy of professional medical paternalism is a stumbling-block to progressive change within the WCBs."

For these reasons, we feel that the <u>medical</u> determination in <u>all</u> compensation claims, including asbestos-related, be the exclusive perogative of the worker's own doctor. We therefore recommend:

1. That the adjudication of asbestos-related claims be carried out by accountable administrative staff at the WCB, and that the role of doctors employed by the Board in adjudicating such claims be eliminated.

It is also felt that, despite Dr. Stewart's contempt for it, Schedule 3 of the Act should be considerably expanded and that the presumption clause of Section 118 (8) strictly adhered to. We therefore recommend:

"2. That Schedule III of the present Act, or its equivalent be considerably broadened to include, in part, such common asbestos-related diseases as:

Mesothelioma

Asbestosis

Carcinoma of the - Lung

- Gastro-Intestinal Tract

- Throat

Such inclusion would presume that such diseases arose out of workplace exposure unless the contrary can be proven by the employer."

"3. That there be no limitation on benefits based on 'lifestyle' arguments such as predisposition, smoking habits, etc. The 'thin skull plaintiff rule' would apply."

II The Role of the WCB in Prevention

It is hopefully an obvious truism that the most liberal laws and administration in a world regarding WCB benefits to asbestos victims



will always be a poor substitute for the prevention of <u>all</u> occupationally induced injury and disease. Clearly a worker with mesothelioma would far rather have his/her health than generous benefits from the Board. Phases I & II of your Commission have explored some phases of prevention; in this section we would like to discuss the role of the WCB as a preventative body, both directly and indirectly.

1. Direct Action by the WCB.

The Workmen's Compensation Act gives the Board authority, under Section 97, to enter into the premises of any covered employer "for the purposes of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents..." If such inspection shows unsafe or unhealthy conditions, the Board may levy a penalty assessment under Section 86(4). These sections, to the best of our knowledge, are rarely, if ever, used. While this role might arguably be more suited to the Ministry of Labour's Occupational Health & Safety Branch, there seems to be little communication between the two bureaucracies. The recent case of a School Board carpenter contracting mesothelioma which was recognized by the WCB resited in the following report of a coroner's inquest in the March 28, 1980 edition of the Globe & Mail.

"John Hastings, a WCB spokesman, said that it was up to the occupational health branch to do any follow-up. However, Hugh Nelson, director of the health branch, said his department was never notified of the case until he was called as an expert witness at the inqu est."

It would appear that no-one wanted to take the responsibility to follow up a potentially hazardous situation. Given this situation, and thousands like it if not as blatant, we recommend:



- 4. That there be established one agency which would be responsible for both prevention and compensation of all work-related injuries and diseases.
- 2. The Bottom Line is Money.

The October 10, 1981 edition of the <u>Financial Post</u> quotes a spokesman for the B.C. Employers' Council as describing Workers' Compensation thusly:

"It's a bargain. Without this form of insurance, the cost would be astronomical if employees could sue for damages for work-related injuries."

The Council no doubt had its eye on the huge number of law suits filed in the U.S. over asbestos-related disease, and the estimated \$120 - \$150 billion which could be levied on the asbestos industry by the courts (N.Y. Times, July 3, 1981) As of May, 1981, Johns - Manville alone had been named in 7,200 suits.

If we apply the standard rule of-thumb, that Canada's population is roughly 10% of the U.S. and extrapolate these figures for Canada, we arrive at a comparable figure of \$12 - \$15 billion in potential damage suits in Canada. (Obviously this involves very rough calculations and is meant for illustrative purposes only. We have not made a study on per capita exposure to asbestos or the fact that asbestos exposure through mining would present different data.) By comparison, the Ontario WCB's income in 1980 is reported as \$529 million, according to the WCB Annual Report 1980. Assault on the Worker estimates the total assets of all the Boards in Canada to have been roughly \$2.81 billion in 1977, (page 170). It is no wonder that the employers' representative above sees compensation as a bargain. It is no wonder that workers have for years expressed the same sentiment, calling the WCB, "cheap insurance for the companies."



Conclusion

As we stated earlier, prevention and compensation are two sides of the same coin. In addition to increased preventative measures by the Ministry of Labour, the WCB should be compensating to the fullest extent, those already victims of, or potential victims of, asbestos-related disease. Industrial disease and injury will continue to occur so long as it is financially more profitable to pay compensation costs and Health & Safety fines than to protect workers. We would therefore recommend:

5. That a greatly expanded programme of investigation be instituted in any employment where asbestos-related diseases are reported, such investigation to include monitoring of all workers and immediate notification concerning the special rehabilitation programme indicated below.

6. That the WCB or responsible agency be empowered to levy penalty assessments on those employers who have been responsible for their workers contracting asbestos-related diseases, such assessments to be used for increased research, rehabilitation and training for such workers.

contracting asbestos-related diseases, such assessments to be used for increased research, rehabilitation and training for such workers.

7. That the present policy of the WCB regarding special preventative rehabilitation measures for workers exposed to asbestos-related danger be broadened and made known to all workers likely to be affected.

Finally, it is with some concern that we view the costs of this

Commission especially regarding the Phases concerning the compensation of
asbestos victims. The workers of this province, as taxpayers, are carrying
the cost of investigating the problems that have been known to industry
for years. The manufacture and sale of asbestos products have produced
millions of dollars of profit. When the bill is in for the human costs
of that profit, we have seen most of these companies vanish. Bendix, JohnsManville's Reeve's Mine, most of Johns-Manville, Scarborough have all.
moved on to greener pastures, leaving human destruction in their wake and
the taxpayers to pay for an investigation of their activities. The workers



of Ontario have paid enough for occupational disease both in physical, emotional and social terms and in terms of the gross under-compensation or non-compensation of many victims. They should not be required to pay for this investigation. We therefore recommend:

8. That the cost of Phase III and IV of this Royal Commission be borne by the Accident Fund of the Workmen's Compensation Board.

Summary of Recommendations

- 1. That the adjudication of asbestos related claims be carried out by accountable administrative staff at the WCB, and that the role of doctors employed by the Board in adjudicating such claims be eliminated.
- 2. That Schedule III of the present Act, or its equivalent be considerably broadened to include, in part, such common asbestos-related diseases as:

Mesothelioma

Asbestosis

Carcinoma of the - Lung

- Gastro-Intestinal Tract

- Throat

- 3. That there be no limitation on benefits based on "lifestyle" arguments such as predisposition, smoking habits, etc. The "thin skulled plaintiff rule" would apply.
- 4. That there be established <u>one</u> agency which would be responsible for both prevention and compensation of all work-related injuries and diseases.
- 5. That a greatly expanded programme of investigation be instituted in any employment where asbestos-related diseases are reported, such investigation to include monitoring of all workers and immediate notification concerning the special rehabilitation programme indicated below.



- 6. That the WCB or responsible agency be empowered to levy penalty assessments on those employers who have been responsible for their workers contracting asbestos-related diseases, such assessments to be used for increased research, rehabilitation and training for such workers.
- 7. That the present policy of the WCB regarding special preventative rehabilitation measures for workers exposed to asbestos-related danger be broadened and made known to all workers likely to be affected.
- 8. That the cost of Phase III and IV of this Royal Commission be borne by the Accident Fund of the Workmen's Compensation Board.



VIII. - INDUSTRIAL DISEASE

Introduction

As is well known, Canada has the highest accident rate of the ten most industrialized countries and looses more time to disability than to strikes. The figures which give rise to these two facts only reflect the tip of the iceberg, however, as they represent mainly traumatic injury. There is mounting scientific and practical evidence that thousands of workers are subject to illness and disability by virtue of exposure to disease-causing substances and processes at the workplace.

We are concerned with the WCB's response to the fact of industrial disease or perhaps we should say lack of response. In 1978 only 1.8% of the recognized claims were for industrial disease. In the meantime about 500,000 chemicals are used or produced in industry with hundreds of new ones added each year. The short-term and long term impact these chemicals have can only be guessed at. In the meantime here in Toronto, schools are being shut down for days while asbestos dust is brought under control while workers often fight losing battles to have asbestos induced disease recognized by the WCB. Asbestos is not included in Schedule 3, the Board's list of recognized disease.

What sort of research is being done on occupational disease? What role does the WCB play in prevention of disease? And finally what action does the WCB take on behalf of workers who have evidence of the disease or are disabled by it?



RESEARCH AND SCHEDULE 3

Schedule 3 lists diseases which may be presumed to be related to occupation where a worker is engaged in a particular occupational process. Schedule 3 is outdated. It does not contain many conditions which are well established as arising out of certain work environments and processes. For example, it does not include any of the causes which may arise from exposure to asbestos.

Schedule 3 is an important part of the Act. allows many claims to be processed with a minimum of time consuming investigation during which a worker must go without benefits. It must be brought up-to-date. The Schedule B of the B.C. Act is an example of a more current list. An integral part of bringing Schedule 3 up-to-date and recognizing legitimate claims is an active on-going primary and secondary research programme. The WCB may pay someone to do a literature search from time to time, or make a contribution to someone else's project, but it does not have a budget for significant occupational disease research. No other government body has the particular mandate to do research either. The nature of WCB's research and the ability of the WCB to be aware of all relevent studies both in Canada and around the world, appears to be very haphazard. The case of the WCB's response to the study of hazards in the aluminum industry which is appended to this brief, indicates that even where the WCB is made aware of studies, a cynical attitude is taken. Rather than prompting the WCB to investigate the hazards further, this study was simply dismissed.

We do not feel confident that the WCB doctors are able or willing to make decisions on claims with full and current information. This represents a severe injustice to injured workers who may have a claim denied where there is in fact significant evidence that it is occupationally related.



(In our representation of injured workers, we often must do considerable medical research before a claim is allowed.)

While not denying that research from universities and other sources is valuable, there must be a centralized research function at the WCB or the Occupational Health and Safety Branch of the Ministry of Labour. This research must be both original and secondary; must include tests on substances before they are introduced into the workplace; and should be paid for from employers' assessments, or perhaps a special assessment, as industry has profited from the use of the hazardous substances, processes, and environments. Rigorous research is a fundamental necessity, both for the purposes of rendering just decisions on claims and prevention of disability.

PREVENTION

Prevention and compensation of industrial disease are two sides of the same coin and as such are inseparable. The Workers' Compensation Act of British Columbia recognizes this principal by providing the Board with authority to make regulations regarding health and safety and to enforce these. The Ontario Board has no such authority. The Ontario Board is given authority under Section 97 to inspect the establishment of an employer to ascertain whether the conditions are safe and may enforce this right of inspection with a fine of more than \$500. This authority, however, is only for the purposes of determining the contribution of the employer It is not used for purposes of correcting to the accident fund. the situation. The assessment scheme provided for in Section 86 allows for a merit and demerit system in regard to health and safety provisions. We have not seen any statistics to show to what extent this acts as an incentive to improve conditions.



We suspect it is not used effectively to that end.

The Board's present involvement in prevention has two aspects. The Board financially supports nine employer-run safety associations. These associations are chiefly concerned with sponsoring educational programmes and media commercials exhorting workers to be more careful on the job. These perpetuate the view that accidents are mainly the result of unsafe practices by workers rather than dealing with the more fundamental problems of hazardous substances and processes and the basic contradiction that it is more profitable to expose workers to possible disability than to take the necessary measures to protect them.

The Board also has an unwritten obligation to inform the Occupational Health and Safety Branch of the Ministry of Labour of any patterns which emerge from claims which indicate a hazard in a particular industry so that this may be investigated. This passage of information does not have a formal system to ensure that there is a timely response to indications of hazard, nor that all circumstances are reported. This can only result in unnecessary continuing exposure for workers, and more cases of disability.

The Dofasco case is well-known. In this case the company itself carried out a study which showed a cancer hazard in its industry and reported this. Due to lack of effective communication between the WCB and the OHS branch the report was not responded to for a year. We can only guess at the number of similar situations causing undue illness and injury caused by lack of action.

In our society where the economic imperative of profit runs in direct contradiction to a thorough practice of health and safety, we must make it unprofitable to run an establishment which causes injury and illness. This means that while employers are complaining of high costs, assessment must be maintained at a level which fully compensates the injured worker for his/her disability and loss of labour power



and that it continues to enforce the employer to feel the sting of poor health and safety practices. This means that fines and prison sentences for contravention of the Health and Safety Act must be more than token slaps on the wrist it must be actually implemented in all cases.

The Board's financial assistance to employer run safety associations would be better spent on a more neutral body which, would not only teach safe work practices, but also practical information on hazards, the monitoring of hazard and rights and obligations of employers and workers in the area of health, safety and compensation.

The Board must have a written and philosophical commitment to prevention, even if the actual responsibity for prevention remains in the hands of OHS Branch and ultimately, employers. There must be formal and publically accountable communication between the two bureaucracies which will ensure immediate and thorough relaying of information and action on this information. The WCB has the raw data which gives evidence on problems; this must be used not only to compensate the victims, but to prevent future victims.

REHABILITATION

While injured workers face many problems in the area of rehabilitation, those suffering from industrial disease face two special dilemmas. Some industries which use or produce hazardous substances have regular tests done on their workers. If these tests indicate that the worker is developing a disease he/she must be informed, as well as the Compensation Board. The Board should be able to act on behalf of the worker at first indication of disease. It is at this point that rehabilitation could be most effective. The worker should be transferred to a new job and given any training necessary to effect this.



While the worker is seeking new employment with the WCB's help he/she should be eligible for full benefits. To demand that the Board wait until the actual disability sets in before it can take action is simply criminal and denies any claim the compensation system may have to truly respond to the disabling effects of occupation. Legislation must be changed so that the Board may actively intervene and assist workers before they are rendered partially or totally disabled or dead. The small start made by the Board with the Eliot Lake uranium miners, must become common practice.

Another aspect to the question of when the WCB may take action is that of Threshold Value Limits
At present there are two TVL given for many substances one forthe general population and one for workers in the hazard related industry, for example lead. Workers in the lead industry must have a higher level of lead in their blood to be considered contaminated than the population at large. This is surely unacceptable. One is either negatively affected by a toxic substance or one is not. There cannot be two separate rules. Workers must not be exposed to higher concentration to toxic substances or be allowed to develop higher levels of contamination than others outside of the industry.

In many cases of industrial disease, the worker is able to recover when he/she is removed from the environment. Upon recovery, however, the WCB expects the worker to return to his/her former job. This can result in an endless cycle of disabling bouts of, dermatisis, asthma, and lead poisoning, and returns to work.



Directive 2 in the WCB policy manual regarding Section 53, states that, "where an injured worker has no existing assessable physical disability which would warrant the continuing of payments of compensation, but in all likelihood returning to his usual occupation would cause the recurrence of disability, rehabilitation payments may be authorized for the purpose of enabling the injured employee to change his occupation."

It has been our experience that this directive is rarely, if ever, applied. To avoid the unreasonable situation of returning a person to a disabling situation, the essence of this directive should be contained in legislation.







Office of the Minister *

Ministry of Labour

AUG 1 2 1981

400 University Avenue Toronto, Ontario M7A 1T7 (416) 965-4101

July 7, 1981

Mr. Nick McCombie Community Legal Worker Injured Workers' Consultants Suite 300, 717 Pape Avenue Toronto, Ontario M4K 3S9

Dear Mr. McCombie:

Thank you for your letter dated June 4, 1981 to which was attached a letter to the Registrar of Complaints, College of Physicians and Surgeons dated June 3, 1981.

From inquiries, I am advised that the Workmen's Compensation Board replied to you in this matter on June 11, 1981. It appears that the reports you seek are privileged under section 99 of The Workmen's Compensation Act, and as that section states, are privileged communications of the person making such medical reports and are for the use of the Board only.

In view of such express statutory language, there appears to be no counselling of an illegal act as you have stated.

As to your complaint to the College, I believe that the portion of the regulation made under the Health Disciplines Act upon which you rely, has application to a patient-physician relationship, that is, one in which the physician is consulted for diagnosis or treatment by a person who is his patient. In the case of a medical examination for the purpose of determining the nature and extent of an injury in order to assess a disability for the purposes of a compensation award, or whether an injury was caused by an accident, I believe the regulation to be applicable. This is, of course, a matter for the College to determine.



Mr. Nick McCombie

July 7, 1981

I trust this is satisfactory and thank you for writing.

Yours very truly,

Robert G. Elgie, M.D. Minister of Labour





Dr. Dupré members of the Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario I appreciate this opportunity to express my experience with the compensation board. I realized around 1970 something was not right with my breathing but did not realize what the problem was. In 1977 I was stopped by the plant nurse she asked me to go to her office that a man from the compensation board wanted to talk to me. This was my first meeting with Mr. Bill Pierce. He explained that he was there to ask me about a rehabilitation program that I was affected by the dust and further explanation would take place at the Howard Johnson I had not been told prior to this by the plant or the compensation Doctor. I had a problem. I can not explain in words the devastating effects this had on me, my wife and five children. As they were and are aware of the people who have suffered and died from this disease. This news destroyed all our future plans. I was asked to come to the H. Johnson Hotel and bring along my wife. It was then I was told by Dr. Stewart of my condition. He told my wife and I to go into the room down the hall and we would be given details of the rehabilitation program. We were told by Mr. Pierce and several other people from the board that they would assist us and that we could go on the rehab program that we could get relocation allowance or they would even help us if we wanted to start a business. We were told not to rush that we had all the time we wanted to make the decision. Again I cannot explain the torture and uncertainty of our future we felt. My wife and children asked me to get out immediately but I was not sure we could manage so I was not able to make this decision at the time.



I phoned the compensation board starting in December 13, 1977 was told Mr. Pierce was not available. I saw him again the week of January 2, 1978 in a cafeteria having coffee with the plant nurse. He said he would see me in a week. He saw me March 1, 1978 only after I had asked the nurse to get him for me. It was during this meeting that Mr. Pierce again told me about the program. I recall he also told me at this time that I know you are very concerned and worried about your problem Joe but we all have to die sometime. I suppose this was true but it did not help a great deal believe me. I was still not sure what to do because I had and still have children going to school and there was no provision for benefits etc. in the program we were offered. I was called up again by Mr. Pierce in the nurses office. He had another gentleman from the board with him again I was asked if I wanted to go in the program. It was this time that I asked Mr. Pierce to give me the details of the program on paper. He said Joe if thats what you want I will certainly see that you get it. I waited a couple of months and did not receive anything. I then met Mr. Pierce in the cafeteria and asked him about the letter. He said did I say that well if I did I will see that you get it. I have asked a total of 4 times for this letter and have not received it. then asked Mr. Pierce who the man was who was with him during the second interview because I knew he could varify me asking for the letter. He said he did not remember or did not know. I still do not have this letter. I was confronted by Mr. R. Wilson of the industrial relations department sometime later he asked me if I wanted to go on the program. I said I was still waiting for the letter. He said well anytime you make



up your mine let me know and I will push it through for you. In the spring of 1980 I was told that my name was on a list of people who would be again offered the program and that the company was going to look after the benefits. It was in June 1980 I was told by the company I would be laid off with severance pay. I noticed that most of the people being layed off were those who had dust problems regardless of seniority that is salary people, at least if it were traced back it would certainly appear this way. I contacted Mr. Pierce and told him I would be layed off and would like to talk to him about the program. He said I'm not sure if I can do anything for you right now. I called him several times after that he promised to get back to me but never did. I then wrote a letter to Mr. Alexander, chairman of the board. He answered me and said he would look into the matter. I later received a letter from him stating that during his discussion with Mr. Pierce he found that I had received pay until August and other considerations and that the program was designed to get people out of the dust and because I was layed off I was no longer in the dust and although he sympathized with my problem he could do nothing about it. When you think of all the grief and worry the board have put my family through to tell us now it was just a joke.

Yours truly,

J. Pagnello





ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY ARISING FROM THE USE OF ASBESTOS IN ONTARIO

SUBMISSIONS OF THE ASBESTOS VICTIMS OF ONTARIO ON WORKERS' COMPENSATION

GOLDEN, LEVINSON, 230 Bloor Street West, Toronto, Ontario.

Counsel to the Asbestos Victims of Ontario.



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ASBESTOS VICTIMS OF ONTARIO
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The Asbestos Victims of Ontario are a group of former workers and widows of deceased workers who contracted asbestos related diseases while working with asbestos and asbestos products in Ontario. Most of the asbestos victims were employed by Canadian Johns-Manville at their plant in West Hill, Ontario. For many years our members have made known to the government and industry their personal concerns about the dangerous use of asbestos products and have complained of the insufficient information about the health effects of exposure to asbestos, inadequate safety precautions and inadequate compensation for those injured as a result of working with asbestos.

In making our submission to Part III of these proceedings dealing with compensation for asbestos victims we wish to focus on three aspects of the problem:

- Prevention;
- Diagnosis;
- 3) Compensation.

It is our belief that those injured as a result of working with asbestos should be fully compensated for their disability and as well as for the anguish and suffering and shortening of life concomitant with such disabilities.

Our recommendations are directed to this end, and while our information in certain areas is not complete, we hope to be able to amplify our concerns during the course of the further public hearings.



PREVENTION

The Asbestos Victims of Ontario believe that there is no safe level of exposure to asbestos fibers and dust. Exposure at any level can result in the development of asbestosis or related diseases. The testimony of the foremost medical authorities in the area before this Commission in recent months supported the proposition that there is a lineal close-response relationship starting at zero and that there is no demonstrably 'safe' level of exposure. Although there appears to be scant evidence at the present time upon which to make definitive conclusions concerning exposure at levels less than .5 fibers/CC., we feel that the existing medical knowledge should cause this Commission to be wary of sanctioning any level of exposure.

The epidemiological evidence that was presented to the Commission supported the lineal relationship of the dose-response curve, and the paucity of information as to the health effects of exposure at low levels are attributable in our submission to the many difficulties associated with epidemiological research and reporting. Foremost amongst these difficulties is the small number of dust count readings taken by the companies during previous decades, the inadequacy of the monitoring devices, the difficulty of converting a dust count record to a fiber count, and the likely inaccuracies of many of the



death certificates relied upon as the basis of the studies. [See Appendix I]

Despite these difficulties, medical opinion based on existing knowledge supports the linear doseresponse curve, and accordingly the Asbestos Victims of Ontario recommend that all non-essential manufacturing and use of asbestos be discontinued immediately and that remaining essential uses be continued only under the strictest guidelines and supervision. This would include placing the following obligations on employers making use of asbestos.

- Notifying the public and prospective employees explicitly of the dangers of exposure to asbestos;
- Placing labels on all bags of asbestos and asbestos products stating that asbestos is dangerous to your health and causes cancer;
- Insisting that all employees wear respirators at all times when they are working with or near asbestos; and
- Having six month medical check-ups of all employees by independent doctors which include a lung X-Ray and lung function test performed by independent physicians.



DIAGNOSIS AND COMPENSATION

Insofar as the preventative measures fail to protect workers and others from being injured from exposure to asbestos, we feel that early diagnosis of the illness is essential to its cure. The results of the medical examinations of asbestos workers should be routinely provided to the worker concerned and to their family doctor.

In the past information has been withheld from employees and as a consequence many who are suffering from asbestos related diseases in the 1970's have only recently discovered that the symptoms of their disease were identifiable on their chest X-Rays as early as 10 or 15 years prior to their illness being diagnosed.

Since there exists a linear close-response relationship between length and degree of exposure it is our belief that a worker should be removed from working with asbestos at the first indications of respiratory illness. Extraordinary precautions should be taken to protect the health of asbestos workers. If there lung function tests show any determination or their X-Rays disclose pleural thickening or any concentration of fibers they should be removed from asbestos infected areas of work.

When there is such an indication of deteriorating health workers should be placed elsewhere in the employ



of the company or given vocational rehabilitation by the Workmen's Compensation Board.



THE WORKMENS COMPENSATION BOARD

An employee who has suffered an injury or illness arising out of or in the course of employment is entitled to make a claim to the W.C.B. The claim is first handled by an adjudicator who in the case of asbestos claims generally makes a recommendation to the Board doctors that the claimant be examined by the Advisory Committee. If the recommendation is accepted a date for the examination is set and the claimant is notified. If not accepted, the claimant is notified that his claim has been denied.

We recently examined some 40 files at the W.C.B. of persons who made claims for asbestos related illness. In almost all cases the adjudicator recommended that the claimant be examined by the Advisory Committee and this recommendation was sometimes accepted, sometimes refused. The Board doctors deciding on this recommendation have no information before them other than that contained in the claimant's file which may or may not include a report from the family doctor.

Our perusal of these files seemed to indicate that when the family doctor found the claimant to have been disabled as the result of an asbestos illness the matter was inevitably referred to Advisory Committee. On the other hand, when there was no medical report, or when the doctor's report indicated that it was unlikely that the claimant had an asbestos related illness, then



the matter was <u>not</u> referred to Advisory Committee for further diagnosis. This result is inequitable insofar as only claims which are prima facie likely to succeed are given further consideration, whereas those claims which are prima facie unlikely to succeed are not given such re-consideration. We believe that equal consideration should be given to all claimants and if the entitlement of prima facie successful claims are to be given further consideration, the same courtesy should be extended to those claims prima facie unlikely to succeed.



ADVISORY COMMITTEE

The Advisory Committee on chest diseases reports to the Board following their examination of a claimant and makes recommendations as to the claimant's entitlement. Our review of the files indicates that this recommendation is inevitably accepted by the Board.

We are particularly concerned about the role that the Advisory Committee plays in the W.C.B. procedure. There is no reference made to their role in the Board's submission to this Commission. Who appoints them and how are they paid? We know that they conduct their examinations at the Ministry of Labour offices on Grosvenor Street in Toronto and that they write their opinions on Ministry of Labour stationery.

Since their opinions are inevitably accepted by the Board it appears that they have usurped the function of the decision maker and that the decision of "Board" doctors is to be preferred to those of the claimant's family physician.

It would appear that the Advisory Committee are acting as "medical referees" pursuant to S.22(1) of the Act to resolve disputes about a client's condition. Subsection (2) makes the referee's decision conclusive. The opinion of these "board doctors" is often in conflict with the opinion of the claimant's family physician



causing innumerable problems particularly when the former is advising return to work, and the latter is advising otherwise.

We recognize the need for specialists to conduct medical examinations of claimants but maintain that these doctors must be approved of by the claimant or their family physician. When there are conflicting opinions as to the nature or extent of a claimant's disability we are of the view that the worker's family physician's opinion should govern the adjudication process.



APPEAL PROCEDURE

The Board only superficially acknowledges its obligation to provide reasons for any denial of entitlement to benefits. All too often at the adjudication level the crux of the decision is contained in the stock phrase "Your Claim has been carefully reviewed by the Chest Disease consultant and it is his opinion that the medical evidence on file does not support your claim of ongoing disability".

There is a similar problem with the evaluation of permanent disabilities. The claimant is perfunctorily informed that it has been decided that he has suffered a certain percentage impairment of his earning capacity. There is no explanation of how this figure is arrived at and no indication of what weight is given to various pieces of the evidence.

In the procedure of evaluating a claimant's entitlement and the extent of the disability, the adjudicator has abdicated his function in favour of the opinion of the 'Board' doctor. The doctor's opinion and recommendation is almost always accepted. In our review of the files we found no case in which the decision of the Advisory Committee physicians was not accepted. The adjudicator in communicating the decision to the claimant parrots the doctor's decision and offers no



indication as to what evidence was accepted and why. In effect, the Board substitutes conclusions for reasons and gives the claimant no indication as to the basis for its decision.

We recommend that the Board be required to provide reasons for decisions made at any level and to explain what evidence they relied on in reaching their decision.



APPEALS

Section 74 of the Act delegates to the Board an extraordinarily wide range of jurisdiction. Since the privative clause contained in Section 74(1) shields the Board from judicial review of most of its decisions the appeal procedure should be beyond reproach.

The Asbestos Victims of Ontario support the recommendations in both the Weiler report and the White Paper on Workers' Compensation concerning the establishment of an independent multi-partite appeal tribunal. The appeal system as it presently exists has an inherent contradiction insofar as the appeal is from a decision already made by the Board and any reversal of that decision will tend to reflect on the credibility of the initial decision-making process.

If there is an independent appeal body then the position of the Board will not clearly be adversarial in nature to the appellant-claimant [See Appendix II]. The nature of this relationship is most often masked in the present appeal procedure, and consequently the claimant is disadvantaged. The claimant is entitled to call evidence and make submissions at the appeal level. His witnesses and himself are subject to cross-examination by the Appeal Board and by the company's representative. The Board, however, is not obliged and rarely does call evidence at the appellate hearings and consequently the



claimant never has an opportunity to question the doctors, investigators or otherwise upon whom the Board relied when making its initial decision. Furthermore, the appellant body can and does rely on this evidence when denying a claim. It is our contention that the appellate bodies not be entitled to rely on any information which is not presented before them and upon which the claimant has no opportunity of cross-examination or rebuttal. If the Board is to rely on a statement of a 'Board' doctor then the doctor must appear at the hearing to give evidence. And, if the Board as a result of the hearing sends its investigators or others to gather further information, then these people as well must give evidence before the appellate body.

This is the standard method of procedure in most other administrative tribunals in this province and we see no reason why the Workmens Compensation Board should be exempted. In short it is our submission that:

- There be an independent final appellate body;
- That it not be entitled to rely on any evidence other than that presented before it;
- That the <u>Statutory Powers Procedure Act</u> apply to all such appellate hearings.



ACCESS TO INFORMATION

The Board presently has a very restrictive policy concerning access to claimants' files. It only allows the 'representative' of a claimant to see the client's file when the matter is being actaully appealed and when the representative gives an undertaking not to disclose any of the information in the file to anyone, including the claimant.

The representative is not permitted to see the file when it is at the Claims Review Branch which is the first stage of appeal from the adjudication level. This level of appeal should be an opportunity for a claimant to define the issues and to make further informan submissions in an effort to win his claim. He is allowed to make written submissions to the Review Branch but when he is uncertain as to the evidence or issues under consideration such submissions are inevitably meaningless.

When a case is appealed to the Appeal Board there are persons employed to review the file and compile Summaries of Information which are precies of the medical reports and internal memoranda. While these summaries are sometimes useful they result in intolerable delays in the appellate procedure, and are no substitute for a review of the file contents itself.



We see no reason why workers and their representatives should not be given complete access to their personal files at all stages of the process after the initial adjudication. This recommendation is consistent with the requirements of natural justice and also with the prevailing concerns that persons be allowed access to their medical files and more generally to all personal files in the possession of government bodies.



EMPLOYERS

The various employers in the province are divided into classes and sub-classes and are collectively assessed as to the number of injuries occurring in their particular industry. For the most part this system seems to be a reasonable means of distributing the risk and insuring that there are sufficient funds to compensate accident victims. The Asbestos Victims of Ontario, however, feel that the Board should exercise its powers not only to increase the amount of assessment pursuant to S.86(4) of the Act to recalcitrant employees, but should penalize those employers who have a consistently high number of accidents. Section 86(4) of the Act provides:

"Where in the opinion of the Board sufficient precautions have not been taken for the prevention of accidents to employees in the employment of an employer or where the working conditions are not safe for employees or where the employer has not complied with the regulations respecting first aid, the Board may add to the amount of any contribution to the accident fund for which the employer is liable such a percentage thereof as the Board considers just and may assess and levy the same upon the employer."

When this subsection is read along with S.86(7) which provides:

"Where the work injury frequency and the accident cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the Board, as provided by the regulations, may increase the assessment for that employer by such a



percentage thereof as the Board considers just, and may assess and levy the same upon the employer, and may require the employer to establish one or more safety committees at plant level."

it would appear that the Board has sufficient power to make positive assessments against those employers with a consistently high accident rating or those who have taken insufficient precautions to prevent accidents.

We have no information as to whether the Board has utilized these sections but recommend that the Board be required to regularly review the accident record of each employer and to adjust the assessments accordingly.



DISABILITY AWARDS AND SURVIVOR'S BENEFITS

In order to establish a claim to the W.C.B. for industrial disease the worker must satisfy the Board that the illness is job-related. The Workmen's Compensation Act defines "industrial disease" as any of the dozen diseases found in Schedule 3 "and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation". (S.1(1)(i))

Asbestosis is not included in Schedule 3 and therefore an asbestos worker must show that his illness is peculiar to or characteristic of working with asbestos.

Section 118(1) of the Act provides that a worker is entitled to compensation if "(he) suffers from an industrial disease and is thereby disabled or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged. There is a rebuttable presumption of entitlement with respect to diseases on Schedule 3, while in other cases the onus of proof is on the claimant to establish that his illness is work related. This in practice is often difficult to do given the insufficient records of most employees concerning occupational health and safety matters, and the tentative nature of the medical conclusions.

Even though the Board gives the benefit of the doubt to claimants, this is of doubtful assistance if the



claimant cannot first offer positive medical evidence of the etiology of his illness. In order to deal with this problem the Board has established certain guidelines to assist adjudicators and has accepted certain dose-response ratios as valid bases upon which to build evidence of an industrially caused illness. For example, the Board has decided that a prima facie case of Mesothelioma requires that a worker have a history of at least 10 years exposure to asbestos and there be a minimum interval of 15 years between first exposure and the appearance of Mesothelioma. Similar guidelines have been established for other industrial diseases.

While the existence of these guidelines certainly helps those claimants who fall within its perameters, they also tend to disentitle those workers who are not within the guidelines. We are concerned about the authority of the Board to promulgate guidelines such as these which in effect set standards for the adjudication of industrial diseases. The Board is not bound by strict legal precedent and should consider each case on its merits. Insofar as guidelines are necessary we recommend that asbestosis and all related asbestos diseases be scheduled and that it be made an irrebutable presumption that workers affected with these diseases contracted them by exposure to asbestos regardless of the length of time that the worker was employed in an asbestos infected environment.



We also recommend that the Board be required to regularly publish its decisions so that claimants can know how they can expect their claim to be adjudicated and whether they will have any chance of success on appeal.

Section 36(1) of the Act is the entitlement section for dependants of injured workers whose death "results from an injury" arising out of or in the course of employment. The Board has guidelines dealing with fatal injuries which effectively disentitle dependants who cannot prove that the death was the direct result of an industrial accident. A common example would be an asbestos worker who has been judged partially disabled and is receiving a ten through 50 percent disability award from the Board for asbestosis. Should this claimant subsequently die from bronchial pneumonia or myocardial infarction then the surviving dependants would not be entitled to any benefits because the death was not the result of an industrial injury.

In our view the Board is taking a very narrow view of the entitlement allowed pursuant to S.36(1) and is failing to recognize the myriad of medical complications that can result when one's lungs are filled with asbestos dust and fiber. We recommend that there be a scheduled list of diseases and illnesses which are caused or exacerbated by having become ill with asbestos or related



diseases; and that there be an irrebutable presumption that death from any of these diseases also resulted from an injury arising out of or in the course of employment.



DISCRETION UNDER S.41(1)(b) AND S.42(5)

The maintenance of benefits at the total level depends, in the case of a permanently disabled worker on S.42(5) and in the case of a partially disabled worker on S.41(1(b) of the Act. In order to qualify for ongoing benefits under the sections workers must meet imprecise and often undefined criteria.

The Board views these sections as giving them the authority to impose treatment on an injured worker and to insist on job searches and/or vocational rehabilitation. With regard to the cessation of total benefit payments because a worker is not available for work, the Board has placed the burden of proof on the claimant to produce a list of the businesses contacted. We propose that no such job lists be required until such time as the claimant be advised that he is no longer considered totally disabled and that he must actively seek employment.

The Board often reviews files and re-categorizes the nature or extent of a claimant's disability. This review of the file is done without prior notification to the claimant and only afterwards is the claimant advised of the result of the re-consideration. In our view any re-consideration of the claimant's file is in the nature of an appeal, and the claimant must be notified and given the opportunity of making further submissions prior to any decision being made.



Furthermore, we recommend that should the Board seek to reduce a claimant's entitlement or compensation in any manner following such a review, that they be required to notify the worker of their intentions, and to maintain the benefits at their existing level for a period of six months in order to allow the claimant to adduce additional evidence or to appeal the re-assessment. This procedure would be consistent with principles of natural justice as well as the principle of fairness insofar as compensation should not be stopped without sufficient advance notice to allow the claimant to arrange his affairs accordingly.

Often the result of the re-consideration of a claimant's file is to shift the claimant's status from S.39 to S.41(1)(b) or S.42(5) without his being apprised of the implication of the shift.

Insofar as S.42(5) has validity the criteria for eligibility should be made explicit. It is generally understood that the term "impairment of earning capacity... significantly greater than is usual" refers to a worker's peculiar social and personal circumstances and probably includes language problems, educational deficiencies, advanced age, and limited marketable skills. If these are the relevant criteria we recommend that they be spelled out in legislation and not left entirely to the discretion of Board personnel who offer no clue as to when supplements should or should not be paid.



PRE-EXISTING CONDITIONS

The most common reason given by the Board for disallowing claims is that the claimant had a pre-existing condition which contributed to or caused the injury. In the case of myocardial infarction, the adjudication guidelines attribute all infarctions to pre-existing circulatory problems even when there is no evidence of such. We believe that it must be legislated that pre-existing conditions have no relevance in determining entitlement once it is established that the injured worker was able to perform his job prior to the accident.

There is no sound reason for allowing the Board to rely on unproven pre-existing medical disabilities to disallow or reduce entitlement. Even should such a pre-existing condition be proven, there is no reason why the claimant should not receive full compensation benefits. In the common law, the tortfeasor is responsible for all damage caused to even the "thin-skilled" person and should such a person's ability to work be impaired as a result of an accident, the Defendant would be responsible for this damage. Similarly, the employer takes the worker as he finds him. He was able to work before the accident and therefore it is the accident which is the relevant cause of the ability to work.

An alternative method of viewing this problem



is that the worker's "pre-existing" impairment has already restricted him to the employment that he had. There is no justification in saying that following the accident, the pre-existing conditions impair the worker's earning capacity to below the pre-accident level.



CONCLUSION

The workers' compensation scheme has been part of Ontario law for most of this century. It was intended to provide speedy and adequate compensation to those injured at work without the need for individual civil actions by injured workers against their employer. In this scheme the worker forgos his common law right to civil damages in exchange for a statutory right to be compensated without regard to the question of liability.

In order for the statutory scheme to be effective, however, it must award damages on the same scale as could be expected from a civil jury trial, and must award them in cases where on the balance of probabilities the workers' injury or death results from his employment.

In this age where there exist many toxic chemicals and dangerous materials, it is far more difficult to determine the etiology of an illness or injury than it was in the early decades of this century when injuries were patent and their causes notorious. Nevertheless, we feel that it is notorious that exposure to asbestos even in small quantities and for a short period of time can cause illness and death, and that workers and spouses of deceased workers so exposed should be compensated. To do otherwise would be to deny the carcinogenic nature of asbestos. In our submission, all areas of doubt concerning the cause of an asbestos worker's illness should be resolved



in favour of the claimant, even if this results in much higher compensation premium costs to the employees. Such payments are costs of doing business in this era and should properly be borne by those who encourage the use of a dangerous and volatile substance.

Furthermore, employees who can distribute the costs amongst users of the product are more capable of bearing the risk and cost of such injuries.

The Workmen's Compensation Act as presently drafted recognizes that an employee may have a right of action as entitle him to an action against some person other than his employer for damages resulting from an accident arising out of or in the course of employment (S.8(1), 14).There is no right of action, however, against another Schedule I employer for such damages (S.8(9)). In our submission, an employee should not be precluded from exercising his civil right to sue his employer or others when there is evidence of reckless disregard for health and safety. In such a case the employee should be entitled to sue such employer or third parties and to receive worker's compensation benefits until such time as the case is resolved. If there is an award of damages the Board would have a subrogated interest and would be reimbursed from the damages recovered. existence of such an action would not undermine the function of the Board but would have a determent effect on those employees and suppliers who have reckless disregard for



the safety of their workers, and are immunized from the consequences of their actions by a fixed rate assessment and the distribution of the risk amongst a pool of employees.

The Workmens' Compensation Board could reduce the necessity for such legal actions if they more vigorously exercised their mandate to supervise and improve the working conditions throughout Ontario. The Board is supposed to know the details of every industrial accident that occurs in the province. They have the right to enter into the ... employer's premises and to "ascertain whether the ways, work, machinery or appliances therein are safe, adequate, and sufficient and whether all proper precautions are taken for the prevention of accidents to employees..." (S.97(i)) and to increase the assessment if the safety precautions are inadequate. The results of these examinations and the accident records of the various companies should be made known to the public so that pressure can be brought to improve the working conditions and that prospective employees will know the risks of working in a particular enterprise. This public disclosure coupled with the possibility of a civil lawsuit and an award of punitive damages for reckless behaviour might motivate employees to take precautions to prevent accidents from occurring.

It is important not only to fully compensate every injured worker, and to provide adequate rehabilitation



counselling but the ultimate aim is to prevent the occurrence of occupational accidents and the resulting human loss and suffering. We believe that the adoption of the foregoing recommendation would be of substantial assistance in achieving this goal.

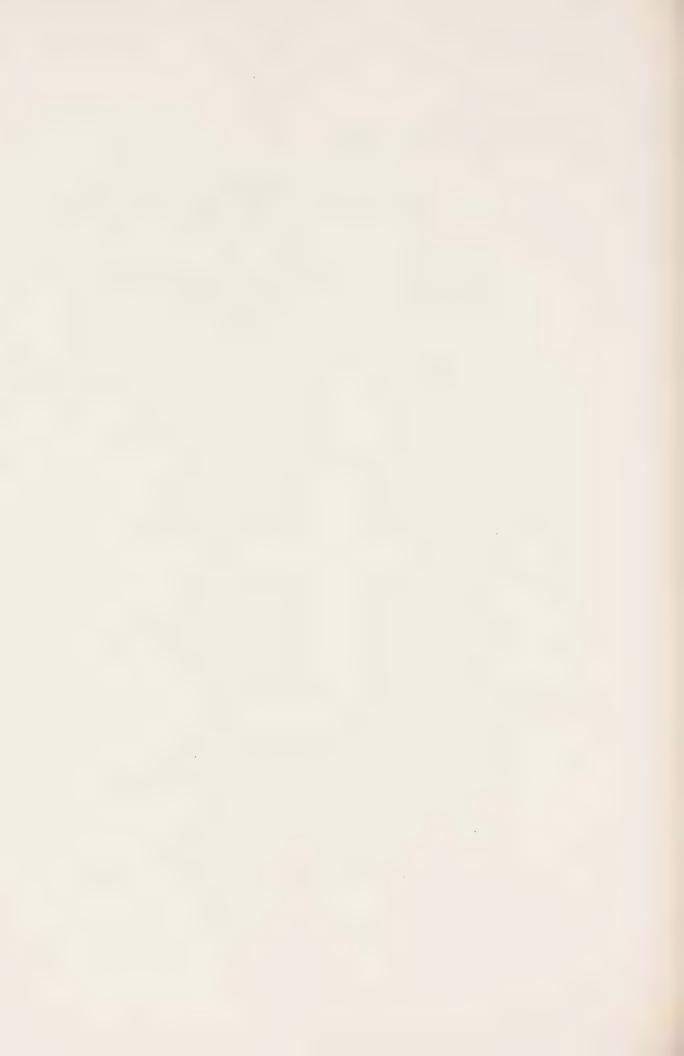


SUMMARY OF RECOMMENDATIONS

- That the public and Prospective Employees be explicitely notified of the dangers of exposure to asbestos.
- That labels be placed on all bags of asbestos and asbestos products stating that asbestos is dangerous to your health and causes cancer.
- 3. That employees be required to wear respirators at all times when working with or near asbestos.
- 4. That employees have 6 month medical examinations by independent physicians.
- 5. That the results of these examinations be routinely provided to the worker's family physician.
- That if an asbestos worker is found to have any indication of a deteriorating medical profile that he be immediately removed from the asbestos environment.

WORKMEN'S COMPENSATION BOARD

- 7. That in cases of dispute the opinion of the worker's family physician should govern the adjudication process.
- 8. That the Workmen's Compensation Board be required to provide complete reasons for their decision.



- 9. That there be established an independent appeal board from decisions of the Workmen's Compensation Board adjudications.
- 10. That the <u>Statutory Powers Procedure Act</u> apply to all such appellate hearings.
- 11. That the Appeal Board Act be entitled to consider any evidence except that properly before it.
- 12. That a claimant or his representative be given complete access to his Workmen's Compensation Board file at any time following the adjudicator's decision.
- 13. That the Board be required to exercise its powers under s.s. 86(4) and (7) to penalize reluctant employers.
- 14. That asbestosis and all related diseases be scheduled and that it be made an irrebutable presumption that unless affected with these diseases contracted them by exposure to asbestos regardless of the length of time that a worker was employed.
- 15. That the Board publish regularly its decisions.
- 16. That there be a scheduled list of diseases and illnesses which are caused or exacerbated by being ill with an asbestos related disease and that there be an irrebutable presumption that



death from any of these decisions also resulted from an injury arising out of or in the course of employment.

- 17. That should the Board, after reviewing a claimant's file, decide to reduce or curtail benefits already awarded, they be required to notify the claimant beforehand and to maintain the existing benefit level for a period of 6 months.
- That no jub search lists be required of a claimant until such time as the claimant is advised that he is no longer considered totally disabled and that he must actively seek employment.
- 19. That the Board be required to make explicit the criteria for eligibility pursuant to S.42(5).
- 20. That the Board be precluded from considering pre-existing conditions when deciding on a claimant's entitlement once it is demonstrated that an employee was able to perform his job prior to the accident.
- That employees be given a statutory cause of action against their employers, suppliers and others when it can be shown that these persons had reckless disregard for the health and safety of employees.







Ministry of the Environment

135 St. Clair Avenue West Suite 100 Toronto, Ontario M4V 1P5

November 30, 1981

Dr. J. Stefan Dupre, Chairman Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario 180 Dundas Street West 22nd Floor Toronto, Ontario M5G 128

Dear Dr. Dupre:

Attached for consideration by the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario is a submission prepared by the Waste Management Branch of the Ontario Ministry of the Environment.

The submission embodies two major concerns of the Ministry regarding asbestos as a waste material.

One concern is for the proper handling, transportation and disposal of asbestos waste, as reflected by the Ministry's recently developed interim guidelines on the subject. The guidelines are attached as an appendix to the submission.

The other concern is that the true nature of asbestos as a waste material be understood by those concerned with its effects upon human health and the environment. The critical distinction is made in the submission that while asbestos fibres are potentially harmfull when they become airborne in the work place, they are essentially harmless in soil after proper disposal in a sanitary landfill site.

The submission was prepared following discussion with Donald N. Dewees, the Royal Commission's Director of Research, and a significant portion of the submission is devoted to answering the questions subsequently raised by Dr. Dewees about waste disposal practices in Ontario and the government's regulation of such practices. We would be pleased to provide any further information you might wish in this regard.



It was previously agreed by Dr. Dewees that we should sumbit this brief by the end of November.

Thank you for the opportunity to bring this submission to the attention of the Royal Commission at this time.

Yours truly,

C.J. Macfarlane

Director

Waste Management Branch

HW/sb



SUBMISSION TO ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY ARISING FROM THE USE OF ASBESTOS IN ONTARIO

 $\mathbf{B}\mathbf{Y}$

MINISTRY OF THE ENVIRONMENT



FOREWORD

This submission to the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario has a threefold purpose:

- (1) To set forward the Ministry of the Environment's recently developed "Interim Guidelines for the Handling, Transporting and Disposing of Waste Asbestos Material".
- (2) To describe the current situation in Ontario regarding waste asbestos disposal.
- (3) To answer questions raised by the Royal Commission concerning existing waste disposal practices in Ontario and the Ontario government's regulation of such practices.

The interim guidelines are attached as an appendix to this document.

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APPENDIX

Interim Guidelines for the Handling, Transporting and Disposing of Waste Asbestos Material



BACKGROUND TO INTERIM GUIDELINES

Purpose

The "Interim Guidelines for the Handling, Transporting and Disposing of Waste Asbestos Material" have been developed by the Ministry of the Environment to provide procedures for minimizing asbestos emissions into the air environment during the handling, transportation and disposal of insulation and fire-proofing asbestos materials being removed from schools and other buildings.

Reflecting overall Ministry policy, the interim guidelines were drafted with the intention of being supplementary to the existing requirements of Ontario's environmental legislation. They were prepared after considering pertinent regulations in other jurisdictions, research of relevant technical literature and discussions with industrial hygiene and medical personnel of the Ministry of Labour.

The interim guidelines are intended for the guidance of contractors removing asbestos waste from installations, carriers hauling asbestos waste and disposal site operators receiving asbestos waste. The interim guidelines will also help Ministry staff to execute abatement and approvals functions.



Landfilling as a Disposal Method

The interim guidelines are based on the premise that landfilling in properly operated landfill sites, according to procedures such as those laid out in the interim guidelines, is the best practical technology for the disposal of asbestos waste material. Potentially hazardous as an air pollutant, asbestos is not a soil pollutant and does not constitute an environmental hazard when deposited and kept under suitable ground cover.

The safety of asbestos in soil stems in large part from its extremely limited mobility. Asbestos is readily retained by soil and does not become part of the leachate from a landfill site. In addition, although asbestos degradation occurs in soils at a very slow rate, it eventually separates into harmless calcium, magnesium and silicate compounds to join similar naturally occuring constituents.

Special facilities are not required for the disposal of asbestos waste material.



Procedures

The <u>handling procedures</u> of the interim guidelines are directed at ensuring that containers used for packaging waste asbestos are air-tight and structurally sound and that bulk handling methods will similarly not allow asbestos fibres to become air-borne.

The <u>transportation procedures</u> of the interim guidelines are concerned with type of vehicles to be used for hauling asbestos waste, the possibility of accidental spillage and the making of prior arrangements with disposal site operators before transportation takes place.

The <u>disposal procedures</u> of the interim guidelines are directed at ensuring the safe unloading and disposal of asbestos waste in sanitary landfill sites. Of particular concern are measures to be taken if containers of asbestos waste break open or clothing becomes contaminated with asbestos fibres.

Adherance to the procedures contained in the interim guidelines will ensure the safe handling, transportation and disposal of waste asbestos material.



ONTARIO'S WASTE ASBESTOS DISPOSAL DILEMMA

Asbestos Defined as a Hazardous Waste

Because of the essentially harmless nature of asbestos in soil, asbestos waste material being removed from schools and other buildings in Ontario is being disposed of in landfill sites across the province. However, this practice is not without legal complexity with regard to many of the landfill sites being allowed by the Ministry of the Environment to accept asbestos waste material.

The difficulty stems from the fact that, according to existing regulation, asbestos, even though harmless in soil, must nevertheless be defined as a hazardous waste because of the precautions required to ensure that its fibres do not become airborne*. This, in turn, means that public hearings would be required before asbestos waste can be accepted at the landfill sites, because the sites in question have not been formally approved to receive either hazardous wastes in general or asbestos in particular.

^{*} According to Ontario Regulation 824, under The Environmental Protection Act, 1971, "hazardous waste means waste that requires special precautions in its storage, collection, transportation, treatment or disposal, to prevent damage to persons or property and includes explosive, flammable, volatile, radioactive, toxic and pathological wastes".



At present, some landfill site operators are not accepting asbestos waste for disposal. A number of other site operators, while accepting asbestos waste in packaged container form, are not accepting highly liquid asbestos waste slurry in bulk form on the grounds that such material falls into the category of liquid industrial waste and therefore cannot be disposed of at their sites, which are certified under Part V of The Environmental Protection Act, 1971, to receive only solid wastes.

Resolving the Dilemma

The Ministry of the Environment has been exploring two general approaches for resolving the difficulties raised by its decision, taken in the face of no other option, to allow landfill sites not specifically approved to receive asbestos waste to, in fact, accept asbestos waste.

The first approach is for the sites in question to undergo the standard approvals process for obtaining permission to receive a waste designated as hazardous such as asbestos. However, this approach would be greatly time-consuming in the current situation, as it would entail the holding of separate public hearings for each of the many hundreds of landfill sites involved, as required under Section 33a of The Environmental Protection Act, 1971. In addition, disruptions in asbestos waste disposal would almost certainly result.



The second approach to the problem is more fundamental, that is, to recognize the inadequacy of the existing regulatory definition of hazardous waste. Under this definition (see page 4), a substance such as asbestos, which does not pose a threat to the environment or human health after disposal in a sanitary landfill site, must nevertheless be put into the same category as a substance that does pose such a threat. The existing definition for hazardous waste, in other words, is far too encompassing, allowing for insufficient distinctions to be made between substances of widely varying environmental concern.

The Ministry of the Environment has proposed to revise the definition for hazardous waste to read as follows:

"Hazardous Waste" means waste that requires significant additional precautions through the provision of extraordinary control measures for the disposal facility to prevent environmental and human health damage resulting from their uncontrolled release from such a facility.

The designation of such wastes as hazardous shall be determined by recognizing the factors of ignitability, corrosivity, reactivity, toxicity, radioactivity, and pathogenicity.

This approach would provide a more accurate and meaningful definition for hazardous waste that will

a. focus on the control measures required for disposal facilities to prevent harmful environmental and human health effects, and



b. allow for asbestos to be properly excluded as a hazardous waste because of its harmless nature in landfill.

This exclusion of asbestos as a hazardous waste will be similar, in effect, to the delisting of asbestos as a hazardous waste by the U.S. Environmental Protection Agency in November 1980. That action was taken on the grounds that asbestos is essentially an air pollution problem and that the provisions of the National Emission Standard for Asbestos Program are adequate for controlling air-borne emissions from waste disposal operations. The continued listing of asbestos as a hazardous waste material would have resulted in duplicate regulations, which, it was felt, should be avoided. The Ontario Ministry of the Environment has established ambient air quality guideline for asbestos.

In Ontario, the provisions necessary to safeguard the environment against air-borne asbestos emissions during the handling, transportation and disposal of asbestos are to be found in the Ministry of the Environment's interim guidelines.



ANSWERS TO QUESTIONS RAISED BY ROYAL COMMISSION*

1) Is there a reclamation of waste asbestos material in the province? It has been suggested that occasionally large quantities of almost pure asbestos fibre may be removed, in the form which might be susceptible to re-use. Do Ministry of Environmental policies either encourage or discourage re-use as opposed to disposal of such material?

There is no reclamation of asbestos waste material known to the Ministry taking place in Ontario. Asbestos has remained a relatively low-cost material; therefore, its manufacturers have not generally felt the need to undertake its reclamation, particularly as its usually mixed with other substances in the end products in which it is normally found.

As far as Ministry policies are concerned, it is the general policy of the Ministry of the Environment to encourage the <u>reduction</u>, <u>re-use</u> and <u>recycling</u> of <u>all waste materials</u>, over their disposal, both to lessen the demands being made upon existing disposal facilities and to conserve resources. The Ministry would most certainly, therefore, not oppose to the safe re-use of asbestos.

^{*} Questions taken from letter of August 14, 1981, from Donald N. Dewees, Director of Research, Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, to Colin J. Macfarlane, Director, Waste Management Branch, Ontario Ministry of the Environment.



2) What is the nature of the Ministry of the Environment's monitoring and surveillance of waste disposal sites in general, and for asbestos in particular? What forms of contact do you have with those who haul waste and those who operate waste disposal sites? How often are site inspections made? What manpower does the Ministry devote to this particular activity?

Waste disposal site operators and waste haulers are required under Part V of the Environmental Protection Act, 1971, to have certificates of approval issued for their operations by the Ministry of the Environment. Ministry staff, working out of regional and district offices, regularly inspect disposal sites and waste hauling operations across the province to ensure they are operating in compliance with their certificates of approval and the provisions of the Environmental Protection Act, 1971, and its regulations.

Frequency of inspection depends largely upon the past history of a given operation, the types of wastes being transported or received for disposal and, as in the case of asbestos, the nature of the precautions to be taken with the wastes involved. The more a specific disposal site or hauling operation has been a source of complaint or found to be in violation of approval conditions or the Act and regulations, the more frequently it is inspected on an ongoing basis. The more hazardous the wastes involved, the more frequent inspections will also generally be.

The provision of the interim guidelines that haulers inform the Ministry of the Environment, as well as the Ministry of Labour and the disposal site operator, prior to transporting waste asbestos to a given



site, will allow Ministry staff sufficient opportunities to observe how closely individual waste haulers and disposal site operators follow the guidelines.

Approximately 240 Ministry staff are engaged in the inspection of waste management operations across the province, including sanitary landifl sites, organic waste disposal sites, industrial waste disposal sites, incinerators and waste hauling operations.

During the year ending March 31, 1981, 5822 man-days were devoted to on-site inpsections of these operations and the preparation of inspection reports.



3) What is your experience with the use of the waybill system for small jobs that are not regulated by the Ministry of Labour such as removing waste from a building involving a contract of less than \$50,000 or 1 month duration? Do you conduct surveillance to determine whether the waybill system is operational on these small jobs? Do you have a mechanism for ensuring that your guideline procedures will be followed in these situations?

Ontario's waybill system is applicable to liquid industrial wastes no matter how small an amount requires transportation to a disposal site or other facility. The built-in mechanisms of the waybill system ensure that all transfers of liquid industrial waste are accounted for under the system.

The built-in mechanisms of the interim guidelines for asbestos waste should ensure that guideline procedures are followed no matter the amount of material being transported for disposal. As indicated on Page 5 of the interim guidelines:

"Prior to the transporting of the waste asbestos the Ministries of the Environment and Labour, and the municipality or private operator of the disposal site must be notified of the quantity of waste, the type of packaging involved, and any other pertinent details. Permission of the landfill site owner must also be obtained before transporting."



4) Is there any practicable method for dealing with asbestos waste generated from small sources such as the brake dust recovered from automotive garages engaged in brake repair work? If such a garage conscientiously followed accepted work practices for cleaning the brake drum, they would accumulate a modest quantity of asbestos fibre dust which would have to be removed. I suspect that any garages which do collect this dust simply toss it into their general refuse bin. Are there particular practices that should be followed by such garages to ensure that the dust trapped in the garage is not released in the waste disposal process?

The Ministry is satisfied with Ministry of Labour's proposed Regulation and Guidelines for controlling asbestos which controls asbestos at the work place. The Ministry of Labour also requires companies to establish asbestos control programs. It has been left to garage operators to use common sense when removing and disposing of brake lining material with other refuse. Common procedures in this work include the use of internal vacuum systems to prevent asbestos fibres from becoming air-borne and the wetting of brake dust before removal.

5) If it appeared that in practice there was a significant amount of asbestos spillage and fibre release during the waste transport and disposal process, would there be any merit in requiring that the asbestos materials be neutralized before placing them in disposal containers? This might consist of adding special liquids or foams to hold the fibre so that it could not be released if the package was broken.

Water or special wetting agents are generally used during removal operations to make asbestos fibres adhere together and not become air-borne. The material therefore is usually sufficiently "neutralized" before packaging for transport and disposal. The interim guidelines also call for haulers to carry a wetting agent, as well as protective clothing and clean-up equipment, in the event of accidental spills or container breakage during transit.



6) The transport of asbestos fibres and their disposal in a dump might raise exposure problems for the general public as well as for truck drivers and dump site operators. What degree of co-ordination is exercised between the Ministry of Labour and the Ministry of the Environment in dealing with these two types of exposure from this sort of operation?

Extensive discussions have taken place, and are continuing, between waste management staff of the Ministry of the Environment and industrial hygiene and medical personnel of the Ministry of Labour regarding potential exposure problems arising from the handling, transportation and disposal of waste asbestos material.

The primary results of these discussions, to date, are embodied in the interim guidelines, which contain detailed instructions for truck drivers and landfill site operators concerning the handling of waste asbestos in order that the risks of potential exposure to asbestos fibres might be minimized, both for themselves and the general public. Control measures for worker exposure are also provided under The Occupational Health and Safety Act, 1978, and enforced by the Ministry of Labour through its Occupational Health and Safety Division.



7) What is the Ministry of the Environment's record in notifying waste disposal operators and dump site operators of improper practices, securing compliance with requests for practice improvement, and imposing penalties upon operators who fail to comply? Presumably this question would have to be dealt with regarding all applicable rules and regulations, not just those dealing with asbestos, since presumably there has been very little concern about asbestos until quite recently.

When visiting a waste disposal site, Ministry staff usually fill out a standard form listing all operational and other aspects to be inspected. A copy of the completed form is then sent to the owner of the site, indicating whatever violations of approval conditions or operating procedures may have been observed.

In dealing with violations, the Ministry first of all seeks the voluntary compliance of the site owner or operator towards rectifying any outstanding matters. Co-operation in this regard is usually received, with legal action only taken as a last resort. Charges have been laid in the past against waste disposal site operators and waste haulers for failure (1) to obtain necessary licences and approvals, (2) to comply with licences and approvals, (3) to comply with control orders.



8) Does the Ministry of the Environment conduct air quality monitoring in the vicinity of dump sites, and if so for what pollutants? Have any investigations been conducted with regard to asbestos fibre levels in the vicinity of Ontario dump sites?

Air quality monitoring is conducted in the vicinity of landfill sites only as considered necessary. Examples include monitoring for the dust being raised into the air from on-site operations and to determine whether a given site may contain specific organic chemicals such as PCBs. In-ground probes have occasionally been conducted to check for methane gas build-up, usually in the area of former landfill sites that have been closed for a number of years.

It has not been considered necessary to monitor for asbestos at landfill sites because of the precautions generally taken during the disposal of this material.

9) The U.S. Environmental Protection Ageny is apprently preparing to undertake extensive studies on the problems of disposing of asbestos waste products. What contact does the Ministry of the Environment have with information sources at the EPA?

The Ministry of the Environment maintains regular contact with the U.S. Environmental Protection Agency at many levels in most areas of environmental concern. EPA information on asbestos regulation proved useful during preparation of the interim guidelines.



Who makes the policy decisions whether a particular dump site will accept or not accept asbestos wastes? Does the Ministry of the Environment have jurisdiction to influence such a decision?

The Ministry of the Environment has general jurisdiction over determining what types of waste material shall be received by a landfill site in the province and administers the approvals process by which a site may, or may not, be allowed to receive a given waste material for disposal. Concerning asbestos waste, the Ministry is allowing such material to be received for disposal by landfill sites that have been certified as suitable to receive solid wastes under Part V of the Environmental Protection Act, 1971.

The draft guidelines suggest that asbestos not be considered as a "hazardous waste". What would be the consequences of classifying asbestos as a "hazardous waste"? Would the public be better protected with such a classification than without? Would disposal costs be significantly inceased?

As indicated in this submission, asbestos is currently defined as a hazardous waste according to the current definition for hazardous waste contained in Ontario Regulation 824, under The Environmental Protection Act, 1971. The consequences of asbestos remaining defined as a hazardous waste have also been touched upon, that is, the holding of many hundreds of public hearings across the province, plus almost certain disruptions in asbestos waste disposal as this process proceeded.

How asbestos is classified has no bearing on how well the public would be protected from contact with asbestos. In other words, whether



asbestos is defined as hazardous or not, the same provisions contained in the interim guidelines would apply as being satisfactory to ensure the protection of those handling, transporting and disposing of asbestos and the general public alike. Similarly, disposal costs itself would not be affected by how asbestos is classifed — the same guideline provisions for disposal would apply. In fact, if asbestos were classified as hazardous the transportation cost may increase because a site approved for accepting hazardous waste would undoubtedly be farther away, and the risk associated with highway transportation would increase.



INTERIM GUIDELINES FOR THE HANDLING, TRANSPORTING AND DISPOSING

OF

WASTE ASBESTOS MATERIAL

MINISTRY OF THE ENVIRONMENT

November, 1981



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I STATEMENT OF INTENT

The primary purpose of these guidelines is to assist Ministry staff in the execution of abatement and approvals functions. They may also be used by public agencies and industry as an indication of environmental control requirements.

These guidelines are supplementary to the requirements of The Environmental Protection Act pertaining to the emission of air contaminants and the disposal of solid wastes, and the "Water Management - Goals, Policies, Objectives and Implementation Procedures of the Ministry of the Environment".

The guidelines reflect overall Ministry policy. They should be applied recognizing the need to apply common sense and good judgement in those cases where the guidelines may not be fully adequate, and that satisfactory alternative waste management techniques may arise. The main aim is to provide safe, practical and efficient means of subduing the risks associated with asbestos fibres.



II INTRODUCTION

In recent years, the epidemiological evidence for asbestos as a carcinogen has been accumulating, linking occupational exposure to asbestos with such lung diseases as fibrosis and asbestosis. People who are primarily at risk from asbestos are those workers who mine, manufacture or otherwise handle material containing asbestos. For the protection of these workers, the Occupational Health and Safety Act, 1978 applies. The Act is administered by the Ontario Ministry of Labour.

Outside the work place, environmental exposure to asbestos is never great enough to induce asbestosis. (1) However, as with all other carcinogens, "safe" levels of exposure to asbestos are unknown. Therefore, these guidelines are primarily directed towards providing procedures for minimizing asbestos emission into the air environment during the handling, transporting and disposing of asbestos wastes.

Health hazards from asbestos occurs mainly through inhalation of air contaminated with asbestos fibres. Once properly disposed of at a landfill site the movement of asbestos fibres in soil is virtually nil.(2) When the site is maintained after closure, asbestos wastes will not present a health hazard to the general public.

⁽¹⁾ Ontario Ministry of Labour, Occupational Health and Safety Division, Asbestos in Public Buildings, March 26, 1980.

⁽²⁾ Fuller, W.H., Movement of Selected Metals, Asbestos, and Cyanide in Soil: Applications to Waste Disposal Problems, University of Arizona, EPA-600/2-77-020, April, 1977.



III GUIDELINES

(A) HANDLING

The majority of waste asbestos material is generated when insulation or fireproofing material containing asbestos is removed from buildings. The removal of asbestos usually involves the use of a wet technique which is based upon the ability of water to lower both the friability of the sprayed material and minimize the amount of asbestos which becomes airborne. In addition, commercially available wetting agents are used to greatly reduce the amount of water needed for saturation.

(a) Packaged Handling

Either wet or dry waste asbestos materials should be placed in airtight containers. The purpose of such containers is to minimize any escape or contact by personel or equipment with asbestos during loading, transporting and disposal operations.

The containers should be rigid, air tight, and capable of being sealed, such as drums made of plastic, wood or metal. In general, cardboard boxes should not be used; however, small cardboard boxes with a volume less than one cu ft may be used in conjunction with six-mil polyethylene bags to achieve an air-tight seal and maintain structural integrity. These bags in small cardboard boxes should be transported in a fully-enclosed vehicle, which does not include an open stake truck with a tarp or net. The use of polyethylene bags is not particularly suited to wetted as bestos waste, since the additional weight of the water can cause further stress reducing the thickness, and ultimately resulting in the loss of the container's integrity. In addition, six-mil polyethylene bags should not be used where the waste material may puncture the bags.



In filling the containers, care should be taken to ensure that the exterior of the containers are not contaminated with asbestos waste. Any external contamination should be cleaned by washing before the containers can be loaded onto the transport vehicle.

All packaged asbestos waste containers should be labelled or identified. The identification mark should contain the following wording:

CAUTION

Contains Asbestos Fibres

Avoid Creating Dust

Asbestos May Be Harmful to Your Health

Wear Approved Protective Equipment

The word "CAUTION" should have a minimum letter size of 4" high and the marking should contrast in colour with the background to allow for easy recognition. Wherever possible, the packaged asbestos waste should be taken directly to a landfill site, and the vehicle should not carry other waste materials simultaneously.

Care should be taken in loading and unloading the containers so as to ensure the integrity of the container and its contents. With six-mil polyethylene bags in small cardboard boxes, each box should be handled separately. No punctured plastic bags, broken or leaking container should be loaded onto the vehicle. The loading of as bestos waste onto the hauling vehicle should be closely supervised by a competent person to ensure that all containers are properly secured.

(b) Bulk Handling

Proprietary methods for the removal, transportation and disposal of asbestos waste may be used. However, specific operational requirements and control measures should be acceptable to the Ministry's regional



officer. Every possible step must be taken to avoid air emissions during loading, transport and disposal.

(B) HAULAGE

Any hauler of waste asbestos material is required under Part V of The Environmental Protection Act, 1971 to have a valid (provisional) certificate of approval for a waste management system issued by the Ministry of the Environment.

Several types of vehicles are common to the waste disposal industry, but generally only the roll off or lugger (non-compaction) type are suitable for the haulage of packaged waste asbestos. Compaction type vehicle must never be used. To ensure that any asbestos containers are not lost in transit, such vehicles should be covered with netting or a tarpaulin since they are not usually fully enclosed. When 6 mil plastic bags and cardboard boxes are used together as containers, a truck with a fully enclosed body is required.

In order to deal with accidental spills or container breakage during transit, the vehicle driver should be familiar with the clean-up and handling procedures. The vehicle should be equipped with a shovel, a broom, a wetting agent, protective clothing, six mil plastic bags, bag closures and respiratory equipment.

As for bulk handling, the transporting vehicle should also be checked thoroughly to ensure that all valves and gates are closed and secured and there is no sign of leakage.

Prior to the transporting of the waste asbestos, the Ministries of the Environment and Labour, the municipality or private operator of the disposal site must be notified of the quantity of waste, the type of



packaging involved, and any other pertinent details. Permission of the landfill site owner must also be obtained before transporting.

(C) DISPOSAL

At this time the only acceptable disposal method for asbestos waste is by landfilling at landfill sites which have been certified as suitable to receive solid wastes under Part V of the Environmental Protection Act, 1971.

The following procedure for the landfilling of waste asbestos containers should be used to ensure minimum release of asbestos to the air. The most important factor to ensure proper and safe disposal is the operator's conscientiousness.

- 1. The unloading of the containers should be supervised by a competent site operator to ensure that no loose asbestos or broken containers are unloaded and landfilled, and that no airborne particulate is generated.
- 2. In the event that loose asbestos or broken containers are found, the haulage vehicle operator shall repackage this material with the additional containers or bags provided on his vehicle.
- 3. The operator should wear protective equipment while repackaging as specified in item 7. Immediately after unloading, the containers should be landfilled.
- 4. The containers should be placed directly in a depression in the working face which has been created by the on-site equipment (bulldozer), or another specially designated area.
- 5. A 4 foot layer of garbage or cover material should be placed above the containers to avoid direct contact with the on-site compaction equipment.



- 6. The containers should be placed, covered and compacted immediately after unloading.
- 7. Control measures for worker exposure to asbestos are enforced by the Ontario Ministry of Labour through its Occupational Health and Safety Division.
- (a) Respiratory equipment should be used by all personnel directly involved in the handling of the waste during loading, unloading and landfilling.
- (b) Any clothing which has been or is suspected to have been in direct contact with asbestos, especially when loose or broken containers are found during handling, transporting or disposal, should be changed on site at the end of the working day, and washed before being reused. At no time should the contaminated clothing be allowed to come in direct contact with the general public. Disposable clothing is the preferred alternative.

Specific questions with respect to control requirements for worker exposure to asbestos should be directed to the Ontario Ministry of Labour.

With the bulk handling system, asbestos waste may be discharged directly in a depression by opening of the tail gate. Care should be taken during the discharge operation to minimize any possible spillage at the landfill site. Immediately after deposition, the asbestos waste should be covered with a 4 foot layer of earth material.

At the end of the operation, the interior of the truck should be thoroughly washed. If any part of the truck exterior is contaminated during the discharge operation, it should be thoroughly washed before the truck leaves the landfill site. The wash water should be disposed of at the landfill site.



All applicable requirements from item 1 to 7 should still be followed.

Since the deposition of asbestos waste in a certified landfill site which is competently operated poses no known health hazards, there appears to be no need to establish special sites dedicated to accept asbestos only.



APPENDIX A

MINISTRY OF THE ENVIRONMENT

District Office Locations

(24 hour telephone service except where indicated by *)

Barrie
12 Fairview Road
Barrie, Ontario .
L4N 4P3
Belleville

(705) 726-1730

15 Victoria Avenue Belleville, Ontario K8N 125

(613) 962-9208

Cambridge 400 Clyde Road Cambridge, Ontario NIR 5W6

(519) 623-2080

Chatham
435 Grand Ave. West
Chatham, Ontario
N7L 3Z4

(519) 352-5107

Cornwall

4 Montreal Road 2nd Floor Cornwall, Ontario K6H 1B1

(619) 933-7402

Halton-Peel

1226 White Oaks Blvd. Oakville, Ontario L6H 2B9

(416) 844-5747

Hamilton

140 Centennial Parkway North Stoney Creek, Ontario L8E 3H2

(416) 561-7410

Huntsville *

100 Main St. East Huntsville, Ontario POA 1K0

(705) 789-2386

Kenora *

 808 Robertson Street Kenora, Ontario P9N 1X9

468-5578



Sa	r	n	ia

242A Indian Rd. South Suite 209S Sarnia, Ontario N7T 3W4

(519) 336-4030

Sault St. Marie

445 Albert St. East Sault Ste. Marie, Ontario P6A 2J9

(705) 949-4640

Sudbury

Ontario Government Building 199 Larch St. Sudbury, Ontario P3E 5P9

(705) 675-4501

Thunder Bay

435 James St. South Thunder Bay, Ontario P7C 5G6

(807) 475-1315 (807) 475-1205

Timmins

83 Algonquin Blvd. West Timmins, Ontario P4N 2R4

(705) 264-9474

Toronto

150 Ferrand Drive Suite 700 Don Mills, Ontario M3C 3C3

(416) 424-3000

Welland

637-641 Niagara St. North, Welland, Ontario NIR 5W6

(519) 735-0431

Windsor

6th Floor 250 Windsor Avenue Windsor, Ontario N9A 6V9

(519) 254-5129



Kingston 133 Dalton Street Kingston, Ontario K7L 4X6	(613) 549-4000
London 985 Adelaide St. South London, Ontario N6E 1V3	(519) 681-3600
Muskoka-Haliburton * Gravenhurst, Ontario POC 1G0	(705) 687-3408
North Bay	
1500 Fisher Street (Northgate Plaza) North Bay, Ontario P1B 2H3	(705) 476-1001
Oakville 1226 White Oaks Blvd. Oakville, Ontario L6H 2B9	(416) 844-5747
Ottawa	
2378 Holly Lane Ottawa, Ontario KIV 7PI	(613) 521-3450
Owen Sound 220-11th St. East Suite 108	
Owen Sound, Ontario N4K 1T9	(519) 371-2901
Parry Sound 75 Church Street Parry Sound, Ontario P2A 121	(705) 746-2139
Pembroke *	
1000 MacKay St. Pembroke, Ontario K8A 6X1	(613) 732-3643
Peterborough * 139 George St. North Peterborough, Ontario	
K9J 3G6	(705) 743-2972
T .	



APPENDIX B

MINISTRY OF LABOUR

District Office Locations

Hamilton 1 West Avenue South L8N 2R9	(416) 527-2951 1-800-263-6906
Kingston 1055 Princess Street K7L 1H3	(613) 542-2853 1-800-267-0915
Kitchener 824 King Street West N2G 1G1	(519) 744-8101 1-800-265-8723*
London 205 Oxford Street East N6A 5G6	(519) 439-3231 1-800-265-4707*
Ottawa 2197 Riverside Drive K1H 7X3	(613) 523-7530 1-800-267-1916*
St. Catharines 295 King Street L2R 3J5	(416) 682-7261 1-800-263-7260*
Sault Ste. Marie 390 Bay Street P6A 1X2	(705) 949-3331
Sudbury 199 Larch Street P3E 5P9	(705) 675-4455 1-800-461-4000*
Thunder Bay 435 James St. South Postal Station "F" P7E 6E3	(807) 475-1691
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Toronto
47 Sheppard Avenue East
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500 Ouellette Avenue N9A 1B3 (519) 256-8278 1-800-265-1333*

Head Office 400 University Avenue Toronto, Ontario M7A 1T7

> General Enquiries Standards and Programs (416) 965-8710

Construction Health and Safety (416) 965-7161 1-800-268-8013*

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(416) 965-3211
1-800-268-9007*

Special Studies and Services (416) 965-1328

The Ministry may also be reached 24 hours a day through the emergency telephone number in Toronto. (416) 965-1211.

^{*} Toll free (Long Distance) For further information consult the government listings in your local telephone book.



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To the Royal Commission on Asbestos.

My father died of asbestosis on June 27, 1981.

In the summer of 1980, by the development of the acuteness of my father's illness, we were forced to think of the possibility of asbestosis, and from that point our lives became tortured. We grabbed at things to try to put the blame on something else, from an abscessed tooth to general fatigue, but deep down everyone knew that the strongest possibility was the long-term effect of having worked at Johns-Manville. This almost subconscious knowledge made everyday life as difficult as my father's death.

Before our worst suspicions were confirmed, I can remember pointing out manifestations of the disease to my father; for instance, an open sore that remained on his finger, in hopes that he would be able to give me another explanation for it -- most often he had no answer and our mutual silence was fear.

As senseless and incomprehensible as death seems, my father's seems even more so to me. For only four years he worked at Johns-Manville as a very young man with three children to support. My parents had very little money at the time and it seemed like a Godsend to have the opportunity to make so much money. During his employment there, he went for regular chest x-rays with the company doctor -- revealing nothing, although each visit got him a different coloured card corresponding to the state of his lungs. At the end of the four years he began getting skin irritations and lung difficulties. He was diagnosed by the company doctor as having an allergic reaction to something causing the rash and a development of pleurisy in his lungs - which recurred over the years.

My father had told me that the only protective equipment he had seen there was a mask which lay unused in the corner for the full four years. There was never any mention of any possibilities of repercussion from working with asbestos, although the air was visibly thick with it, and you could feel that you were breathing it in. It makes you wonder what is necessary for a company to realize potential hazards; and if they have to be pushed to the limit we are experiencing now, then is the onus on the individual to decide and act on safety measures? Proper testing and precautions puts the appropriate value on human life — because I can't help but think that in this instance the value was on production and profit.

The horror of the disease that haunts me in memory now, is watching my father try to breathe in those last months of his life. Sitting in a darkened room so no sunlight or heat could enter through the windows, with fans and an air conditioner going, I would still see but one side of his chest heaving in a conscious effort to breathe. And I had to sit there with the air flowing so freely through my lungs — something so simple and natural that I take for granted was consuming my father's whole life. He could only nap while sitting up, because the pressure on his chest was too much if he lay down, and if he slept too long he was frightened that he would forget to breathe and never wake up. That was how my father died, by lying down and sleeping — what he feared most.

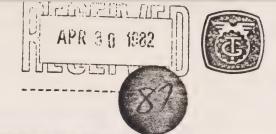


For a girl, her father is a very important person, and so far is the only man in my life. My image of him now is a frightened one for the closest memories are the worst. All the things I loved the most about him, he lost in those dying months. He was a very thoughtful man who loved solitude — and that disease made him fear being alone, it changed the whole expression on his fact and his character. It did actually consume him before it killed him. I, too, couldn't stand to be alone and think during that period, and now many of my happiest moments are no longer possible for me.

Morag Perkins 1467 Military Trail West Hill, Ontario MIC 1A7



Transport and General Workers Union



TRANSPORT HOUSE SMITH SQUARE WESTMINSTER TONDON SWAR TO THE

OUR REF AB/CH /15444/16

TELEPHONE 01-828 7788 TELEGRAMS TRANSUNION LONDON SW1 TELEX No 919009

YOUR REF 82/1

LEGAL DEPARTMENT
Secretary: A. C. BLYGHTON

26th April, 1982.

The Secretary,
Royal Commission on Matters of Health,
180 Dundas Street West,
22nd Floor,
TORONTO,
Ontario,
M5G 1ZB.

Dear Sir.

I have been reviewing issues related to your Commission. I have been particularly interested in the newsletters that have been sent out, and issues that have been raised with the Commission.

I write to state that our Union has been very closely identified with asbestos workers for over fifty years. Indeed we have many records showing varying degrees of disablement including death from Mesothelioma. All conditions have been as a result of exposure to asbestos.

I sat on a Government committee enquiring into the facts of asbestos in this country. The striking feature that became very clear to our Union at the outset was that up to twenty years ago there was little in protective measures provided. As a result, we have had a very substantial number of serious cases to deal with.

Regulations which were issued in the 1960s began to tackle the problem and further measures recommended by our enquiry, if totally implemented, would go some way towards establishing a much safer environment for all.

The reason why I feel that it is important to write to you, is in regard to the question of distribution and use of asbestos. In this country over the years it has been possible for anyone to acquire quantities of asbestos, both small or large, for any purpose, and no restrictions have been put upon the asbestos companies or their own suppliers in relation to whom the commodity is sold.

/cont...



Whilst users such as insulation employers must be registered and competent, and building employers have to have regard to the existing statutory requirements, the supplier has no restrictions whatever placed upon him.

I would suggest that if you feel that it is relevant for consideration by your Commission, that you consider the point of the supplier only being allowed to sell his asbestos to recognised users who can be certain to be not only aware of regulations, but also someone who is known to carry out such requirements.

Until the matter is controlled in this way, there will always be outbreaks of Asbestosis, particularly in the smaller establishments who, for economic reasons alone, may not be able to comply with the requirements.

I hope that these few observations might be considered.

Yours faithfully,

ALBERT BLYGHTON Legal Department.



a. 95, Aspestos Workers Union)

A SUBMISSION TO:

Mr. M. Jones PO BOX 1373 Fonthill . Ont . LOS IEO

THE ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY ARISING FROM THE USE OF ASBESTOS IN ONTARIO.

TWO MINUTES SILENCE

HISTORY:

The history of "The Magic and Deadly Lust" can be traced back as early as the first century A.D. in Greece where slaves wove asbestos into prized robes and burial garments. At this time, Strabo reported that these workers suffered from a breathing sickness.

Fire-defying tricks performed with asbestos clothes were

displayed in Europe in the 12th century.

In the past hundred years these "unquenchable" or "indestructable silicates have been mined and processed for hundreds of different industrial uses.

From the mid 1950's to the mid 1970's asbestos has been widely used as a fireproofing, thermal and acoustical insulation

material in the Ontario Construction.

In the middle 1970's finally some changes had been made on construction. Substitutions have been put in places such as fibrous glass and calcium silicates, as well as other insulation cements that are asbestos-free.

Since the beginning of the eighties asbestos removal, encapsulation and demolition has opened may more job opportunties.

THERE ARE TWO DIFFERENT TYPES OF ASBESTOS:

1. White asbestos which comes from a group known as serpentine. Some of these are chrysotile (Mg6 (OH)8 Si4 OlO). 2. Blue or brown asbestos are from the other group known as amphiboles. These are:

AMOSITE (Fe5 Mg2 Si8 022 (OH)2).
ACTINOLITE (CaSi03 Mg Si03 FeSi03).
ANTHOPHYLLITE (MgFe7 Si8 022 (OH)2).
CROCIDOLITE (NazOFe203 3Fe08 Si02 H20).
TREMOLITE (CazMg5 Si8)22 (OH)2).

These different asbestos have different characters so therefore they are used for different purpose.

ASBESTOS ATTITUDES:

Now in our society there can only be two different attitudes toward asbestos. First, that asbestos is not a danger, if worked with "safely". And the other side of the coin, that there is always a danger working with asbestos no matter how it is handled.

If you look at the first attitude towards asbestos, you must totally ignore the facts that not all construction sites are in perfect condition for working with asbestos. Plus, even if at the time of application if every condition was met, there is always physical damage to the asbestos material surfaces, in the process of aging and maintainance of the equipment covered. This may happen from many different incidents such as water leaks, repair of equipment, amount of heat and length of time since initial application. Plus if asbestos was safe then there would be no need for this commission.

Rec'd June 10/82



Then if you look at this substances as a danger, then you must look at the procedures used when working with asbestos in the past and present.

On all examples the construction workers, names, jobsites, and actual dates of jobs has been omitted for fear of any reprisals

This first example goes back to the early fifties. I believe there is no need to go back any further on construction because the

procedures never changed at all until the mid seventies.

The first example comes from a retired asbestos worker who first started his career with asbesto in 1950. At this time most of the insulation material was made from nearly pure asbestos. Asbestos pipe covering and blocks and cement were brought on many jobs in boxcar loads. Asbestos cements were mixed in troughs which generally took four hundred pounds of pure asbestos. Water was generally always added to the dry cement so that the texture was suitable for either a rough coat or finishing.

At this time there were no warnings of any health effects. The insulators had no suspicion of any health hazards related to

The next example comes from an Asbestos worker who started in the trade in 1957. He states, "When I started working, there were no warnings given by employers, government or manufacturing firms No warning labels, on boxes or bags of asbestos."

We were told by many employers that it would not harm you because they used it for everything, and that the government would not allow material bagardous to your health to be used.

not allow material, hazardous to your health to be used.

There were no masks or special clothing to be worn. You took your work clothes home to be washed with everyday clothes.

We had to mix the asbestos cement in plasterer's mixing boxes, because they used so much on boilers and smoke stacks. When you emptied asbestos cement bags the air was thick with dust. we said amything about it we were told to wear a wet rag to keep the dust down or be fired. Someone else would do the job.

The last example comes from an asbestos worker who started in the latter part of 1971. The first job was at a lung and chest disease hospital. His first assignment was to mix asbestos cement. The recipe they used for finishing cement was one pail loose asbestos to one-eighth pail portland cement then imix with your hands and add water to get the right texture for the job. P.S. Hold your breath, Why? Answer; Too dusty." He was told to mix large amounts of asbestos cement in the old coal room to confine the dust to one

When he asked the mechanic what type of insulation they were removing he was told asbestos paper. They then replaced it with

asbestos covering what is known in the trade as caposite.

Even at this time in the progess of man, warnings on cartons or bags of asbestos were omitted. He stated, "I still remember the first time I ever saw a warning sign on a bag of cement. It was in 1973, in about an inch and a half square on the back side of the bag, near the bottom of the bag."



Till this day in 1982 I am still waiting for insulation companies to admit to the hazards of asbestos. Back in the seventies even at the most safety conscious jobsites such as Ontario Hydro respirators were not maintained or cleaned regularly.

In most cases the lunch area contained insulation material. On many lunch areas cement bags made chairs to sit on or even

benches for more workers.

Men were forced to eat with dirty hands because of lack of clean running water on many jobs. On May 10, 1978, 385 Insulators at the Texaco Oil Refinery at Nanticoke had a three day walk off in the hopes of gaining some running water so that they might wash their hands. Insulators eat asbestos:::



ADVERSE MEDICAL DISORDERS

Asbestos does cause asbestosis, cancer of the lungs, mesthelioma, cancer of the larynx and plerual plagues.

OUR CONCERN:

We the asbestos workers and the Health and Safety Committee of Local 95 of the International Heat and Frost and Asbestos Workers Association believe that any workers suffering from any of the diseases related to asbestos occupation be given a compensation adequate to suit his former income so that his family and himself does not have to suffer twice, financial and physical loss. And a proper pension for the remaining dependents at the death of the worker caused by asbestos related diseased. We believe that if any persons with a disease who wants jobs rehabilitation be given the opportunity and be paid while the training is taking place, and to continue until a new job placement. At the time of the job placement the difference in wages should be compensated to equal at least his last occupation.

We also believe anyone with disorders such as pleural plagues, pleural thickening, pleural calcification or pleural fluid, be removed from occupation and retrained for another job. It is very important that the workers income remain at least at the same levels. These disorders we believe are obvious warnings that your body is

reacting to asbestos.

We believe this should be funded by a levy on all businesses involved with asbestos, including mining, processing, contracting storing, applying, removal or in any other way involved with the substance asbestos.

We believe anyone working with asbestos, and families should have their health monitored regularly and on a continual basis, preferably twice yearly. This should be done only by phyiscans trained in occupational medicine.

This we believe should be funded by a levy on all businesses involved with asbestos, including mining, processing, storing, applying, removing, contracting, or in any other way involved with

the substance asbestos.

Funding should be by all companies who profit from asbestos to demonstrate their concern for these human health hazards, but ' should be adminstered by a state agency.



QUESTION: Should society permit the use of any substances or entity that knowingly leads either to individual or collective harm or health hazard?

There ar no nuclear weapons in Canada as a matter of public policy.

Saccharine has been removed from general public as a sweetener because of health hazards

E.G. Racism has always been looked down on in Canada. In the new Charter of Rights and Freedoms in Canada Section 15, Article 1.
"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

If you believe the answer to the question is yes, then you

agree with allowing carcinogens, atom bombs and racism.

WHAT SHOULD BE DONE ABOUT THE SUBSTANCES ASBESTOS?

First, one must look at the facts of how the guidelines for the removal and treatment of Asbestos on construction projects are

One must remember even this guideline is not law and cannot be enforced. Plus, just as some insulators have a hard time to distingush the difference between many calcuim silicates that are asbestos free and the one containing asbestos that it would be unrealistic to expect any person without much knowledge of the substance to be able to identify or understand the real hazards of asbestos. If these guidelines are to be applied in practice, then the amount of inspectors in Ontario must vastly escalade from a mere 90 some odd inspectors in the Health and Safety branch of the department of labout. None of which specialise in the substance

The first example comes from an Ontario Hydro Plant where maintainance is being worked. Asbestos is being removed as well as patched up and encapsulated. This report was sent to me by a fellow worker who wanted to point out a couple issues before he gives his example on how the guidelines are being followed.

First, he has worked in the trade for the past twent-five years of his life. He also has taken regular chest x-rays and pulmonary function test put on by the Occupational Chest Disease. In 1982, his family doctor noticed that on his chest x-ray that something was wrong, so he was sent to a specialist. The doctor then asked for all his chest x-rays of the past. The doctor then discovered that a change in his lungs had shown up in 1967, after only ten years of working with asbestos. To his horror he has found himself back on jobsites working again with asbestos. This is his account... This jobsite is at one of the Ontario Hydro generating station and the job is still in progress



Respirators are given out first thing at the beginning

of the shift. One, and only one a day is allowed.

B. One pair of disposable coveralls is given to wear over street There are no hoods or boot coverings.

There are no change rooms or lockers to keep street clothes

separated from work clothes.

- Where the work is being carried out there are no suchthings as polyethelene barriers to contain the asbestos in one area. men were told it would be too much work. So the asbestos dust is allowed to fall through grading on the sixth floor and spread through out the plant. There are some drop sheets on the grading made from canvas cloth.
- Warning signs are put on the ropes which make up the barriers to contain the work site.
- The only vaccuum is made from a forty-five gallon drum which makes it impractical to transport to different removal sites. The wetting agents used on asbestos is pure H20. Because the drop sheets are made from canvas and only covers the immediate area below the removal, the water in the five gallon spray pumps, only wets the surface of the asbestos. There are other workers, working on floors below so the amount of water actually being used is kept to a minimum to reduce the amount of dripage on people. H. There are no mops or sponges for cleaning up areas. As-bestos is put in plastic bags and tied closed. Then the bags are put in disposal containers marked for asbestos, once this container The bags of asbestos are just disposed in the regular bins. The lunch room for the insulators, is the insulation store Where no-one is required to remove coveralls and there is no place to change. No-one is allowed to use the cafeterial because they have work clothes on.
- When an insulator wishes to smoke on the worksite he just removes his respirator and smokes right in the contaminated area. K. When the day is finished the disposable coveralls are put in plastic bags to keep the asbestos from contaminating unnecessary
- The men have no showers on jobsites for proper cleaning. So the men then jump in their cars or public transportation to spread the asbestos to the general public and then to take it home to their loved ones. This jobsite is still one of the most safety conscious jobs. Insulators and their families eat asbestos .:



The next example comes from another jobsite which is in progress at the moment. First, I will explain how asbestos removal operations were carried out before the inspector from Occupational, Health and Safety for construction arrived with the guidelines in January of 1982.

Respirators were given out daily if in stock. These respirators were 3M nontoxic particle masks NO. 8500 which are disposable. One pair of disposable coveralls were given out on a weekly basis or until the coveralls tore. These coveralls did not contain

either hoods or boots covering.

There were no lockers or separate change rooms to keep work

clothes away from street clothes.

When removing asbestos inside buildings or outside no barriers were erected, no roped off areas or no warning signs.

Shovels and brooms were used in picking up asbestos to be put

in plastics bags.

No wetting agents were used before removal of any asbestos.

Asbestos material was allowed to fall to the groung.
G. Asbestos was put in open bins marked for asbestos only until the bins were filled, then the asbestos coverings were placed in any bins to get them off the jobsite.

Men had separated lunchrooms but coveralls were not required

to be removed before entering.

No showers on jobsite for insulator to use. People did not smoke in contaminated areas. J.

Two weeks after the inspector was called to the jobsite the

man who signed the complaint was laid-off.

The only changes in the job that took place was the discontinued use of 3M # 8500 disposable respirators to 3M 8710 disposable respirators and now only one man did the job.

The inspector was called back to the jobsite in April, this time by an anonymous caller. It took two phone calls and only four days to get a respose by the Occupational Health and Safety inspector. This time the inspector was much more thorough in

his investigation.

This time pictures were taken of an insulator in the disposable coveralls, gloves and rubber boots. The inspector then observed an insulator carrying out the procedure, expect instead of removing asbestos the insulator was removing fiber glass insulation without the inspector recognising the difference. The insulator removed fiber glass because the hose wasn't long enough to reach the actual removal site. Ironically only twenty feet away, two plant employers stripped eight feet of asbestos insulation and let it dropped to the floor below. The inspector noticed this happening and questioned one of the plant employees who quickly replied that it was only fiber glass, which he accepted as truth.

The men in charge of the job was in great pleasure to see the inspector leave thinking that all procedure were carried out. It only cost the men in charge a few disposable coveralls



It was surpising that the inspector did not check:

Eating areas. 1.

2. Change rooms or lockers.

Vaccuum systems.

3. Chenk the actual wetting agent.'

5. Check the disposal bins.

Check for showers. Check for barriers. 7.

Check for mons or sponges.

9. Check for protective equipment for other employees working in the area.

These types of inspectors create more problems for insulators

then help. For insulators still eat asbestos.

The last example comes from a non union shop. What are quidelines? Asbestos, does that hurt you? Oh, we don't breathe that stuff, we hold our breath when removing it! Complain? I'm lucky I have a job in these times: "Take these coveralls home to be washed." "No way they're too dirty, I'll just take them to a laundramat.

Secondly, one must look at the hazards of asbestos off the job, since last November 1981.

THE EARLY CANCER DETECTION SCREENING PROJECT: has been conducted by our international president and Dr. I.J. Selikoff of Mont Sinai, one of the most devastating realities has come foreward in recent medical screening, "Some asbestos workers' wives and children have been exhibiting symptoms of asbestos related disease."

Dr. Selikoff stated that asbestos scars were found in the

x-rays of more than 20 per-cent of wives who were examined.

On construction sites we suggest that all asbestos insulations be done under strict supervision by government inspectors who are properly trained in the guidelines and can recognize these deadly substances.

But first the guidelines must be law. Without this being law there will never be any control of the substance asbestos.

Asbestos substitutes should be colour coded so in the future

any asbestos will be recognisable to all workers.

Because of the latency period with asbestos, this has actually given our government, experts in the field of asbestos insulations and fireproofing, who can give practical advice on how to make the guidelines work and know the real dangers.



CONCLUSION:

OUR ODDS FOR DYING FOR OUR JOB ARE MUCH GREATER THAN YOUR::: WE STILL EAT ASBESTOS:::

WE ARE ACTUALLY THE SAME PEOPLE WHO PAY THE PENSIONS TO OUR WIVES AND CHILDREN.

HOW MUCH FINANCIAL COMPENSATION CAN REPLACE A HUSBAND AND FATHER?

WHY SHOULD THIS BE A CRAFTSMAN'S LOT IN LIFE?

IT IS NOT WHAT WE CAN DO FOR OUR SOCIETY, BUT WHAT OUR

SOCIETY LETS BE DONE TO US.

IF ANYONE WHO HAS READ THIS SUBMISSION GIVES US THE
WORKERS, WHO ARE ABOUT TO PUT ON THEIR COVERALLS, TWO MINUTES A
SILENCE THEN YOU MIGHT BE ABLE TO FEEL THE FEARS THAT RUN
THROUGH OUR HEARTS AND MINDS.

THANK YOU FOR THE OPPORTUNITY OF GIVING THIS PRESENTATION.
INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASSBESTOS WORKERS UNION.
LOCAL 95.
HEALTH AND SAFETY COMMITTEE

mike Jones

P.S. By the way the reason I called this submission 'Two Minutes silence' is because at the start of every union meeting two minutes of silence is given to any member who has deceased.









